

TITLE 2

GOVERNMENT STRUCTURE AND ADMINISTRATION

Ch.

4. Administrative Procedure Act.

CHAPTER 4 ADMINISTRATIVE PROCEDURE ACT

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Part 3 Adoption and Publication of Rules

Part Cross-References

Montana Negotiated Rulemaking Act, Title 2, ch. 5, part 1.

2-4-301. Authority to adopt not conferred. Except as provided in part 2, nothing in this chapter confers authority upon or augments the authority of any state agency to adopt, administer, or enforce any rule.

History: En. 82-4204.1 by Sec. 9, Ch. 285, L. 1977; R.C.M. 1947, 82-4204.1(part).

Cross-References

Rule defined, 2-4-102.

2-4-302. Notice, hearing, and submission of views. (1) (a) Prior to the adoption, amendment, or repeal of any rule, the agency shall give written notice of its proposed action. The proposal notice must include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, the reasonable necessity for the proposed action, and the time when, place where, and manner in which interested persons may present their views on the proposed action. The reasonable necessity must be written in plain, easily understood language.

(b) The agency shall state in the proposal notice the date on which and the manner in which contact was made with the primary sponsor as required in subsection (2)(e). If the notification to the primary sponsor was given by mail, the date stated in the proposal notice must be the date on which the notification was mailed by the agency. If the proposal notice fails to state the date on which and the manner in which the primary sponsor was contacted, the filing of the proposal notice under subsection (2)(a) is ineffective for the purposes of this part and for the purposes of the law that the agency cites in the proposal notice as the authority for the proposed action.

(c) If the agency proposes to adopt, increase, or decrease a monetary amount that a person shall pay or will receive, such as a fee, cost, or benefit, the notice must include an estimate, if known, of:

(i) the cumulative amount for all persons of the proposed increase, decrease, or new amount; and

(ii) the number of persons affected.

(2) (a) The proposal notice must be filed with the secretary of state for publication in the register, as provided in 2-4-312. When the agency files the proposal notice with the secretary of state to prepare it for publication in the register, the agency shall concurrently send an electronic copy of the proposal notice to the appropriate administrative rule review committee. If the secretary of state requires formatting changes to the proposal notice before it may be published, the agency is not required to send another copy of the proposal notice to the committee. The requirement to concurrently send a copy of the proposal notice to the committee is fulfilled if the agency sends an electronic copy to each member of the staff of the appropriate rule review committee on the same day that the notice is filed with the secretary of state.

(b) (i) Except as provided in subsection (2)(b)(ii), within 3 days of publication, a copy of the published proposal notice must be sent to interested persons who have made timely requests to the agency to be informed of its rulemaking proceedings, and to the office of any professional, trade, or industrial society or organization or member of those entities who has filed a request with the appropriate administrative rule review committee when the request has been forwarded to the agency as provided in subsection (2)(c).

(ii) In lieu of sending a copy of the published proposal notice to an interested person who has requested the notice, the agency may, with the consent of that person, send that person an electronic notification that the proposal notice is available on the agency's website and an electronic link to the part of the agency's website or a description of the means of locating that part of the agency's website where the notice is available.

(iii) Each agency shall create and maintain a list of interested persons and the subject or subjects in which each person on the list is interested. A person who submits a written comment or attends a hearing in regard to proposed agency action under this part must be informed of the list by the agency. An agency complies with this subsection (2)(b)(iii) if it includes in the proposal notice an advisement explaining how persons may be placed on the list of interested persons and if it complies with subsection (7).

(c) The appropriate administrative rule review committee shall forward a list of all organizations or persons who have submitted a request to be informed of agency actions to the agencies that the committee oversees that publish rulemaking notices in the register. The list must be amended by the agency upon request of any person requesting to be added to or deleted from the list.

(d) The proposal notice required by subsection (1) must be published at least 30 days in advance of the agency's proposed action. The agency shall post the proposal notice on a state electronic access system or other electronic communications system available to the public.

(e) (i) 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 contact, as provided in subsection (8), the legislator who was the primary sponsor of the legislation to:

(A) obtain the legislator's comments;

(B) inform the legislator of the known dates by which each step of the rulemaking process must be completed; and

(C) provide the legislator with information about the time periods during which the legislator may comment on the proposed rules, including the opportunity to provide comment to the appropriate administrative rule review committee.

(ii) If the legislation affected more than one program, the primary sponsor must be contacted pursuant to this subsection (2)(e) each time that a rule is being proposed to initially implement the legislation for a program.

(iii) Within 3 days after a proposal notice covered under subsection (2)(e)(i) has been published as required in subsection (2)(a), a copy of the published notice must be sent to the primary sponsor contacted under this subsection (2)(e).

(3) If a statute provides for a method of publication different from that provided in subsection (2), the affected agency shall comply with the statute in addition to the requirements contained in this section. However, the notice period may not be less than 30 days or more than 6 months.

(4) Prior to the adoption, amendment, or repeal of any rule, the agency shall afford interested persons at least 20 days' notice of a hearing and at least 28 days from the day of the original notice to submit data, views, or arguments, orally or in writing. If an amended or supplemental notice is filed, additional time may be allowed for oral or written submissions. In the case of substantive rules, the notice of proposed rulemaking must state that opportunity for oral hearing must be granted if requested by either 10% or 25, whichever is less, of the persons who will be directly affected by the proposed rule, by a governmental subdivision or agency, by the appropriate administrative rule review committee, or by an association having not less than 25 members who will be directly affected. If the proposed rulemaking involves matters of significant interest to the public, the agency shall schedule an oral hearing.

(5) An agency may continue a hearing date for cause. In the discretion of the agency, contested case procedures need not be followed in hearings held pursuant to this section. If a hearing is otherwise required by statute, nothing in this section alters that requirement.

(6) If an agency fails to publish a notice of adoption within the time required by 2-4-305(7) and the agency again proposes the same rule for adoption, amendment, or repeal, the proposal must be considered a new proposal for purposes of compliance with this chapter.

(7) At the commencement of a hearing on the intended action, the person designated by the agency to preside at the hearing shall:

(a) read aloud the "Notice of Function of Administrative Rule Review Committee" appearing in the register; and

(b) inform the persons at the hearing of the provisions of subsection (2)(b) and provide them an opportunity to place their names on the list.

(8) (a) For purposes of contacting primary sponsors under subsection (2)(e), a current or former legislator who wishes to receive notice shall keep the current or former legislator's name, address, e-mail address, and telephone number on file with the secretary of state. The secretary of state may also use legislator contact information provided by the legislative services division for the purposes of the register. The secretary of state shall update the contact information whenever the secretary of state receives corrected information from the legislator or the legislative services division. An agency proposing rules shall consult the register when providing sponsor contact.

(b) An agency has complied with the primary bill sponsor contact requirements of this section when the agency has attempted to reach the primary bill sponsor at the legislator's address, e-mail address, and telephone number on file with the secretary of state pursuant to subsection (8)(a). If the agency is able to contact the primary sponsor by using less than all of these three methods of contact, the other methods need not be used.

(9) This section applies to the department of labor and industry adopting a rule relating to a commercial drug formulary as provided in 39-71-704. This section does not apply to the automatic updating of department of labor and industry rules relating to commercial drug formularies as provided in 39-71-704.

History: En. Sec. 4, Ch. 2, Ex. L. 1971; amd. Sec. 5, Ch. 410, L. 1975; amd. Sec. 1, Ch. 482, L. 1975; amd. Sec. 8, Ch. 285, L. 1977; R.C.M. 1947, 82-4204(part); amd. Sec. 4, Ch. 243, L. 1979; amd. Sec. 1, Ch. 381, L. 1981; amd. Sec. 1, Ch. 429, L. 1983; amd. Sec. 1, Ch. 152, L. 1997; amd. Sec. 1, Ch. 340, L. 1997; amd. Sec. 2, Ch. 489, L. 1997; amd. Sec. 3, Ch. 19, L. 1999; amd. Sec. 1, Ch. 41, L. 1999; amd. Sec. 2, Ch. 210, L. 2001; amd. Sec. 2, Ch. 88, L. 2007; amd. Sec. 1, Ch. 207, L. 2007; amd. Sec. 2, Ch. 394, L. 2007; amd. Sec. 2, Ch. 21, L. 2009; amd. Sec. 2, Ch. 41, L. 2011; amd. Sec. 1, Ch. 53, L. 2011; amd. Sec. 1, Ch. 433, L. 2017; amd. Sec. 1, Ch. 519, L. 2021.

Compiler's Comments

2021 Amendment: See 2021 Session Law for amendment made by sec. 1, Ch. 519, L. 2021. Amendment effective October 1, 2021.

Applicability: Section 3(1), Ch. 519, L. 2021, provided that the amendments to this section apply to rule proposals filed with the secretary of state on or after October 1, 2021.

Cross-References

- Submission of comments by electronic mail over Internet, 2-3-301.
- Definition of substantive rules, 2-4-102.
- Payment of costs — agency may require, 2-4-103.
- Administrative rules review committees — call for hearing, 2-4-402.
- Estimate of economic impact — published prior to hearing or adoption, 2-4-405.
- Adoption, amendment, or repeal of rule — legislative authority, 2-4-412.

2-4-303. Emergency or temporary rules. (1) (a) If an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon fewer than 30 days' notice and states in writing its reasons for that finding, it may proceed upon special notice filed with the committee, without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. The rule may be effective for a period not longer than 120 days, after which a new emergency rule with the same or substantially the same text may not be adopted, but the adoption of an identical rule under 2-4-302 is not precluded. Because the exercise of emergency rulemaking power precludes the people's constitutional right to prior notice and participation in the operations of their government, it constitutes the exercise of extraordinary power requiring extraordinary safeguards against abuse. An emergency rule may be adopted only in circumstances that truly and clearly constitute an existing imminent peril to the public health, safety, or welfare that cannot be averted or remedied by any other administrative act. The sufficiency of the reasons for a finding of imminent peril to the public health, safety, or welfare is subject to judicial review upon petition by any person. The matter must be set for hearing at the earliest possible time and takes precedence over all other matters except older matters of the same character. The sufficiency of the reasons justifying a finding of imminent peril and the necessity for emergency rulemaking must be compelling and, as written in the rule adoption notice, must stand on their own merits for purposes of judicial review. The dissemination of emergency rules required by 2-4-306 must be strictly observed and liberally accomplished.

(b) An emergency rule may not be used to implement an administrative budget reduction.

(c) (i) For the purposes of this subsection (1), "special notice" means written notice to each member of the committee and each member of the committee staff using expedient means, such as electronic mail. The special notice must include:

(A) the agency's reasons for its findings of imminent peril to the public health, safety, or welfare;

(B) the text of the proposed emergency rule or an overview of the rule's substantive changes; and

(C) the estimated date of adoption.

(ii) Prior to adoption of an emergency rule, the agency shall make a good faith effort to provide special notice to each committee member and each member of the committee staff. The adoption notice of the emergency rule must state the date on which and the manner in which written contact was made or attempted with each person required under this subsection (1). If the adoption notice fails to state the date on which and the manner in which written contact was made or attempted for each person required under this subsection (1), the adoption of the emergency rule is ineffective for the purposes of this part.

(2) A statute enacted or amended to be effective prior to October 1 of the year of enactment or amendment may be implemented by a temporary administrative rule, adopted before October 1 of that year, upon any abbreviated notice or hearing that the agency finds practicable, but the rule may not be filed with the secretary of state until at least 30 days have passed since publication of the notice of proposal to adopt the rule. The temporary rule is effective until October 1 of the year of adoption. The adoption of an identical rule under 2-4-302 is not precluded during the period that the temporary rule is effective.

History: En. Sec. 4, Ch. 2, Ex. L. 1971; amd. Sec. 5, Ch. 410, L. 1975; amd. Sec. 1, Ch. 482, L. 1975; amd. Sec. 8, Ch. 285, L. 1977; R.C.M. 1947, 82-4204(2); amd. Sec. 5, Ch. 243, L. 1979; amd. Sec. 1, Ch. 261, L. 1987; amd. Sec. 1, Ch. 5, L. 1991; amd. Sec. 3, Ch. 489, L. 1997; amd. Sec. 1, Ch. 265, L. 2005; amd. Sec. 1, Ch. 199, L. 2021.

Compiler's Comments

2021 Amendment: Chapter 199 inserted (1)(c) providing a definition of special notice, requiring an agency to make a good faith effort to provide special notice to the appropriate administrative rule review committee members and staff regarding adoption of an emergency rule, and providing requirements to be included in the emergency rule adoption notice. Amendment effective October 1, 2021.

Cross-References

Exception to public participation — emergency situation, 2-3-112.

Emergency rules effective upon filing with Secretary of State, 2-4-306.

Immediate judicial review, 2-4-701.

2-4-304. Informal conferences and committees. (1) An agency may use informal conferences and consultations as a means of obtaining the viewpoints and advice of interested persons with respect to contemplated rulemaking.

(2) An agency may also appoint committees of experts or interested persons or representatives of the general public to advise it with respect to any contemplated rulemaking. The powers of the committees shall be advisory only.

(3) Nothing herein shall relieve the agency from following rulemaking procedures required by this chapter.

History: En. Sec. 4, Ch. 2, Ex. L. 1971; amd. Sec. 5, Ch. 410, L. 1975; amd. Sec. 1, Ch. 482, L. 1975; amd. Sec. 8, Ch. 285, L. 1977; R.C.M. 1947, 82-4204(4).

2-4-305. Requisites for validity — authority and statement of reasons. (1) (a) The agency shall fully consider written and oral submissions respecting the proposed rule, including comments submitted by the primary sponsor of the legislation prior to the drafting of the substantive content and wording of a proposed rule that initially implements legislation.

(b) (i) Upon adoption of a rule, an agency shall issue a concise statement of the principal reasons for and against its adoption, incorporating in the statement the reasons for overruling the considerations urged against its adoption. 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 as that rule is published in the register, the differences must be described in the statement of reasons for and against agency action. When written or oral submissions have not been received, an agency may omit the statement of reasons.

(ii) If an adopted rule that initially implements legislation does not reflect the comments submitted by the primary sponsor, the agency shall provide a statement explaining why the sponsor's comments were not incorporated into the adopted rule.

(2) Rules may not unnecessarily repeat statutory language. Whenever it is necessary to refer to statutory language in order to convey the meaning of a rule interpreting the language, the reference must clearly indicate the portion of the language that is statutory and the portion that is an amplification of the language.

(3) Each proposed and adopted rule must include a citation to the specific grant of rulemaking authority pursuant to which the rule or any part of the rule is adopted. In addition, each proposed and adopted rule must include a citation to the specific section or sections in the Montana Code Annotated that the rule purports to implement. A substantive rule may not be proposed or adopted unless:

(a) a statute granting the agency authority to adopt rules clearly and specifically lists the subject matter of the rule as a subject upon which the agency shall or may adopt rules; or

(b) the rule implements and relates to a subject matter or an agency function that is clearly and specifically included in a statute to which the grant of rulemaking authority extends.

(4) Each rule that is proposed and adopted by an agency and that implements a policy of a governing board or commission must include a citation to and description of the policy implemented. Each agency rule implementing a policy and the policy itself must be based on legal authority and otherwise comply with the requisites for validity of rules established by this chapter.

(5) To be effective, each substantive rule adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law.

(6) Whenever by the express or implied terms of any statute a state agency has authority to adopt rules to implement, interpret, make specific, or otherwise carry out the provisions of the statute, an adoption, amendment, or repeal of a rule is not valid or effective unless it is:

(a) consistent and not in conflict with the statute; and

(b) reasonably necessary to effectuate the purpose of the statute. A statute mandating that the agency adopt rules establishes the necessity for rules but does not, standing alone, constitute reasonable necessity for a rule. The agency shall also address the reasonableness component of the reasonable necessity requirement by, as indicated in 2-4-302(1) and subsection (1) of this section, stating the principal reasons and the rationale for its intended action and for the particular approach that it takes in complying with the mandate to adopt rules. Subject to the provisions of subsection (8), reasonable necessity must be clearly and thoroughly demonstrated for each adoption, amendment, or repeal of a rule in the agency's notice of proposed rulemaking and in the written and oral data, views, comments, or testimony submitted by the public or the agency and considered by the agency. A statement that merely explains what the rule provides is not a statement of the reasonable necessity for the rule.

(7) A rule is not valid unless notice of it is given and it is adopted in substantial compliance with 2-4-302, 2-4-303, or 2-4-306 and this section, unless notice of adoption of the rule is published within 6 months of the publishing of notice of the proposed rule, and unless the adoption is in compliance with the prohibitions of subsection (11). The measure of whether an agency has adopted a rule in substantial compliance with 2-4-302, 2-4-303, or 2-4-306 and this section is not whether the agency has provided notice of the proposed rule, standing alone, but rather must be based on an analysis of the agency's substantial compliance with 2-4-302, 2-4-303, or 2-4-306 and this section. If an amended or supplemental notice of either proposed or final rulemaking, or both, is published concerning the same rule, the 6-month limit must be determined with reference to the latest notice in all cases.

(8) (a) An agency may use an amended proposal notice or the adoption notice to correct deficiencies in citations of authority for rules and in citations of sections implemented by rules.

(b) An agency may use an amended proposal notice but, except for clerical corrections, may not use the adoption notice to correct deficiencies in a statement of reasonable necessity.

(c) If an agency uses an amended proposal notice to amend a statement of reasonable necessity for reasons other than for corrections in citations of authority, in citations of sections being implemented, or of a clerical nature, the agency shall allow additional time for oral or written comments from the same interested persons who were notified of the original proposal notice, including from a primary sponsor, if primary sponsor notification was required under 2-4-302, and from any other person who offered comments or appeared at a hearing already held on the proposed rule.

(9) Subject to 2-4-112, if a majority of the members of the appropriate administrative rule review committee notify the committee presiding officer that those members object to all or a portion of a notice of proposed rulemaking, the committee shall notify the agency in writing that the committee objects to all or a portion of the proposal notice and will address the objections at the next committee meeting. Following notice by the committee to the agency, all or a portion of the proposal notice that the committee objects to may not be adopted until publication of the last issue of the register that is published before expiration of the 6-month period during which the adoption notice must be published, unless prior to that time, the committee meets and does not make the same objection. A copy of the committee's notification to the agency must be included in the committee's records.

(10) This section applies to the department of labor and industry adopting a rule relating to a commercial drug formulary as provided in 39-71-704. This section does not apply to the automatic updating of department of labor and industry rules relating to commercial drug formularies as provided in 39-71-704.

(11) (a) In the year preceding the year in which the legislature meets in regular session, an agency may not adopt a rule between October 1 through the end of the year.

(b) This subsection (11) does not apply to:

(i) an emergency rule adopted under 2-4-303; or

(ii) a rule adopted for implementation of a program or policy if the unavailability of information, guidance, or notice precluded adoption of the rule before October 1. A rule may only be exempted under this subsection (11)(b)(ii) if the notice required under 2-4-302(1)(a) provides a statement explaining why the unavailability of information, guidance, or notice precluded adoption of the rule before October 1.

History: Ap.p. Sec. 4, Ch. 2, Ex. L. 1971; amd. Sec. 5, Ch. 410, L. 1975; amd. Sec. 1, Ch. 482, L. 1975; amd. Sec. 8, Ch. 285, L. 1977; Sec. 82-4204, R.C.M. 1947; Ap.p. 82-4204.1 by Sec. 9, Ch. 285, L. 1977; Sec. 82-4204.1, R.C.M. 1947; R.C.M. 1947, 82-4204(part), 82-4204.1(part); amd. Sec. 6, Ch. 243, L. 1979; amd. Sec. 2, Ch. 381, L. 1981; amd. Sec. 1, Ch. 78, L. 1983; amd. Sec. 1, Ch. 466, L. 1983; amd. Sec. 1, Ch. 420, L. 1989; amd. Sec. 1, Ch. 3, L. 1995; amd. Sec. 2, Ch. 152, L. 1997; amd. Sec. 1, Ch. 335, L. 1997; amd. Sec. 4, Ch. 489, L. 1997; amd. Sec. 4, Ch. 19, L. 1999; amd. Sec. 3, Ch. 210, L. 2001; amd. Sec. 3, Ch. 21, L. 2009; amd. Sec. 2, Ch. 152, L. 2009; amd. Sec. 1, Ch. 270, L. 2009; amd. Sec. 1, Ch. 303, L. 2009; amd. Sec. 2, Ch. 433, L. 2017; amd. Sec. 2, Ch. 100, L. 2019; amd. Sec. 2, Ch. 102, L. 2021; amd. Sec. 2, Ch. 519, L. 2021.

Compiler's Comments

2021 Amendments — Composite Section: Chapter 102 in (9) at beginning of first sentence inserted “Subject to 2-4-112”; and made minor changes in style. Amendment effective March 31, 2021.

Chapter 519 in (7) at end of first sentence inserted “and unless the adoption is in compliance with the prohibitions of subsection (11)”; inserted section (11) providing that in the year preceding the year in which the legislature meets in regular session, an agency may not adopt a rule between October 1 through the end of the year and providing exceptions under certain conditions; and made minor changes in style. Amendment effective October 1, 2021.

Applicability: Section 3(2), Ch. 519, L. 2021, provided: “[Section 2] [amendments to 2-4-305] applies to rule proposals published in the register as required by 2-4-302 on or after [the effective date of this act]. [Section 2] [amendments to 2-4-305] does not apply to rule proposals published in the register prior to [the effective date of this act], even if the rule is subject to a final adoption on or after [the effective date of this act].” Effective October 1, 2021.

Cross-References

Submission of comments by electronic mail over Internet, 2-3-301.

Publication, 2-4-302.

Review of rulemaking record by administrative rules review committees, 2-4-402.

2-4-306. Filing and format — adoption and effective dates — dissemination of emergency rules. (1) Each agency shall file with the secretary of state a copy of each rule adopted by it or a reference to the rule as contained in the proposal notice. A rule is adopted on the date that the adoption notice is filed with the secretary of state and is effective on the date referred to in subsection (4), except that if the secretary of state requests corrections to the adoption notice, the rule is adopted on the date that the revised notice is filed with the secretary of state.

(2) Pursuant to 2-15-401, the secretary of state may prescribe rules to effectively administer this chapter, including rules regarding the printed or electronic format, style, and arrangement for notices and rules that are filed pursuant to this chapter, and may refuse to accept the filing of any notice or rule that is not in compliance with this chapter and the secretary of state’s rules. The secretary of state shall keep and maintain a permanent register of all notices and rules filed, including superseded and repealed rules, that must be open to public inspection and shall provide copies of any notice or rule upon request of any person. Unless otherwise provided by statute, the secretary of state may require the payment of the cost of providing copies.

(3) If the appropriate administrative rule review committee has conducted a poll of the legislature in accordance with 2-4-403, the results of the poll must be published with the rule if the rule is adopted by the agency.

(4) Each rule is effective after publication in the register, as provided in 2-4-312, except that:

(a) if a later date is required by statute or specified in the rule, the later date is the effective date;

(b) subject to applicable constitutional or statutory provisions:

(i) a temporary rule is effective immediately upon filing with the secretary of state or at a stated date following publication in the register; and

(ii) an emergency rule is effective at a stated date following publication in the register or immediately upon filing with the secretary of state if the agency finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare. The agency’s finding and a brief statement of reasons for the finding must be filed with the rule. The agency shall, in addition to the required publication in the register, take appropriate and extraordinary measures to make emergency rules known to each person who may be affected by them.

(c) if, following written administrative rule review committee notification to an agency under 2-4-305(9), the committee meets and under 2-4-406(1) objects to all or some portion of a proposed rule before the proposed rule is adopted, the proposed rule or portion of the proposed rule objected to is not effective until the day after final adjournment of the regular session of the legislature that begins after the notice proposing the rule was published by the secretary of state, unless, following the committee’s objection under 2-4-406(1) and subject to 2-4-112:

(i) the committee withdraws its objection under 2-4-406 before the proposed rule is adopted;
or

(ii) the rule or portion of a rule objected to is adopted with changes that in the opinion of a majority of the committee members, as communicated in writing to the committee presiding officer and staff, make it comply with the committee's objection and concerns.

(5) An agency may not enforce, implement, or otherwise treat as effective a rule proposed or adopted by the agency until the effective date of the rule as provided in this section. Nothing in this subsection prohibits an agency from enforcing an established policy or practice of the agency that existed prior to the proposal or adoption of the rule as long as the policy or practice is within the scope of the agency's lawful authority.

(6) This section applies to the department of labor and industry adopting a rule relating to a commercial drug formulary as provided in 39-71-704. This section does not apply to the automatic updating of department of labor and industry rules relating to commercial drug formularies as provided in 39-71-704.

History: En. Sec. 5, Ch. 2, Ex. L. 1971; amd. Sec. 10, Ch. 285, L. 1977; amd. Sec. 2, Ch. 561, L. 1977; R.C.M. 1947, 82-4205(part); amd. Sec. 7, Ch. 243, L. 1979; amd. Sec. 12, Ch. 268, L. 1979; amd. Sec. 2, Ch. 261, L. 1987; amd. Sec. 2, Ch. 335, L. 1997; amd. Sec. 5, Ch. 489, L. 1997; amd. Sec. 5, Ch. 19, L. 1999; amd. Sec. 4, Ch. 210, L. 2001; amd. Sec. 1, Ch. 370, L. 2005; amd. Sec. 1, Ch. 87, L. 2007; amd. Sec. 1, Ch. 337, L. 2007; amd. Sec. 2, Ch. 303, L. 2009; amd. Sec. 1, Ch. 489, L. 2009; amd. Sec. 3, Ch. 433, L. 2017; amd. Sec. 3, Ch. 102, L. 2021.

Compiler's Comments

2021 Amendment: Chapter 102 in (4)(c) at end inserted "and subject to 2-4-112". Amendment effective March 31, 2021.

Cross-References

Emergency or temporary rules, 2-4-303.

Publication of economic impact estimate of rule, 2-4-405.

2-4-307. Omissions from ARM or register. (1) An agency may adopt by reference any model code, federal agency rule, rule of any agency of this state, or other similar publication if:

(a) the publication of the model code, rule, or other publication would be unduly cumbersome, expensive, or otherwise inexpedient; and

(b) it is reasonable for the agency to adopt the model code, rule, or other publication for the state of Montana.

(2) The model code, rule, or other publication must be adopted by reference in a rule adopted under the rulemaking procedure required by this chapter. The rule must contain a citation to the material adopted by reference and a statement of the general subject matter of the omitted rule and must state where a copy of the omitted material may be obtained. Upon request of the secretary of state, a copy of the omitted material must be filed with the secretary of state.

(3) (a) The model code, rule, or other publication to be adopted by an agency pursuant to subsection (1):

(i) must be in existence at the time that the agency's notice of proposed rulemaking is published in the register;

(ii) must be available to the public for comment, through either publication in the register or publication in an electronic format on the agency's web page, during the time that the rule adopting the model code, rule, or other publication is itself subject to public comment; and

(iii) except as provided in subsection (3)(b), may not be altered between the time of publication of the notice of proposed rulemaking and the publication of the notice of adoption by the agency proposing the rule unless the alteration is required in order to respond to comments in the rulemaking record of the adopting agency.

(b) If the model code, rule, or other publication is altered by the agency between the time of the publication of the notice of proposed rulemaking and the notice of adoption, the part of the model code, rule, or other publication that is altered by the agency is not adopted unless that part is also subject to a separate process of adoption as provided in this section.

(c) If the model code, rule, or other publication is made available on the agency's website, the website may provide either the full text of the model code, rule, or other publication or a link to the source of the official electronic text of the model code, rule, or other publication.

(4) A rule originally adopting by reference any model code or rule provided for in subsection (1) may not adopt any later amendments or editions of the material adopted. Except as provided

in subsection (6), each later amendment or edition may be adopted by reference only by following the rulemaking procedure required by this chapter.

(5) If requested by a three-fourths vote of the appropriate administrative rule review committee, an agency shall immediately publish the full or partial text of any pertinent material adopted by reference under this section. The committee may not require the publication of copyrighted material. Publication of the text of a rule previously adopted does not affect the date of adoption of the rule, but publication of the text of a rule before publication of the notice of final adoption must be in the form of and is considered to be a new notice of proposed rulemaking.

(6) Whenever later amendments of federal regulations must be adopted to comply with federal law or to qualify for federal funding, only a notice of incorporation by reference of the later amendments must be filed in the register. This notice must contain the information required by subsection (2) and must state the effective date of the incorporation. The effective date may be no sooner than 30 days after the date upon which the notice is published unless the 30 days causes a delay that jeopardizes compliance with federal law or qualification for federal funding, in which event the effective date may be no sooner than the date of publication. A hearing is not required unless requested under 2-4-315 by either 10% or 25, whichever is less, of the persons who will be directly affected by the incorporation, by a governmental subdivision or agency, or by an association having not less than 25 members who will be directly affected. Further notice of adoption or preparation of a replacement page for the ARM is not required.

(7) If a hearing is requested under subsection (6), the petition for hearing must contain a request for an amendment and may contain suggested language, reasons for an amendment, and any other information pertinent to the subject of the rule.

(8) This section does not apply to the automatic updating of department of labor and industry rules relating to commercial drug formularies as provided in 39-71-704.

History: En. Sec. 6, Ch. 2, Ex. L. 1971; amd. Sec. 11, Ch. 285, L. 1977; R.C.M. 1947, 82-4206(3); amd. Sec. 8, Ch. 243, L. 1979; amd. Sec. 1, Ch. 591, L. 1981; amd. Sec. 6, Ch. 19, L. 1999; amd. Sec. 1, Ch. 333, L. 2011; amd. Sec. 4, Ch. 433, L. 2017.

2-4-308. Adjective or interpretive rule — statement of implied authority and legal effect. (1) Each adjective or interpretive rule or portion of an adjective or interpretive rule to be adopted under implied rulemaking authority must contain a statement in the historical notations of the rule that the rule is advisory only but may be a correct interpretation of the law. The statement must be placed in the ARM when the rule in question is scheduled for reprinting.

(2) Subject to 2-4-112, the appropriate administrative rule review committee may file with the secretary of state, for publication with any rule or portion of a rule that it considers to be adjective or interpretive, a statement indicating that it is the opinion of the appropriate administrative rule review committee that the rule or portion of a rule is adjective or interpretive and therefore advisory only. If the committee requests the statement to be published for an adopted rule not scheduled for reprinting in the ARM, the cost of publishing the statement in the ARM must be paid by the committee.

History: En. Sec. 1, Ch. 637, L. 1983; amd. Sec. 7, Ch. 19, L. 1999; amd. Sec. 4, Ch. 102, L. 2021.

Compiler's Comments

2021 Amendment: Chapter 102 in (2) at beginning of first sentence inserted "Subject to 2-4-112"; and made minor changes in style. Amendment effective March 31, 2021.

2-4-309. Rulemaking authority for laws not yet effective — rule not effective until law effective. Unless otherwise provided in the statute, an agency may proceed with rulemaking under this chapter after the enactment of a statute to be implemented by rule, but a rule may not become effective prior to the effective date of the statute.

History: En. Sec. 1, Ch. 185, L. 2001.

2-4-310 reserved.

2-4-311. Publication and arrangement of ARM. (1) The secretary of state shall compile, index, arrange, rearrange, correct errors or inconsistencies without changing the meaning, intent, or effect of any rule, and publish all rules filed pursuant to this chapter in the ARM. The secretary of state shall supplement, revise, and publish the ARM or any part of the ARM as often as the secretary of state considers necessary. The secretary of state may include editorial notes, cross-references, and other matter that the secretary of state considers desirable

or advantageous. The secretary of state shall publish supplements to the ARM at the times and in the form that the secretary of state considers appropriate.

(2) The secretary of state shall publish the ARM, including supplements or revisions to the ARM, in a printable electronic format and make the electronic version of the ARM freely available through the secretary of state's website.

(3) The ARM must be arranged, indexed, and published or duplicated in a manner that permits separate publication of portions relating to individual agencies. An agency may make arrangements with the secretary of state for the printing or electronic distribution of as many copies of the separate publications as it may require. The secretary of state may charge a fee for any separate printed or electronic publications. The fee must be set and deposited in accordance with 2-15-405 and must be paid by the agency.

History: En. Sec. 6, Ch. 2, Ex. L. 1971; amd. Sec. 11, Ch. 285, L. 1977; R.C.M. 1947, 82-4206(part); amd. Sec. 9, Ch. 243, L. 1979; amd. Sec. 8, Ch. 19, L. 1999; amd. Sec. 3, Ch. 396, L. 2001; amd. Sec. 3, Ch. 303, L. 2009; amd. Sec. 1, Ch. 80, L. 2017.

2-4-312. Publication and arrangement of register. (1) The secretary of state shall publish in the register all notices, rules, and interpretations filed with the secretary of state at least once a month but not more often than twice a month.

(2) The secretary of state shall publish the register in a printable electronic format and make each issue of the register freely available through the secretary of state's website. The secretary of state shall maintain a permanent archive of the register.

(3) The register must contain three sections, including a rules section, a notice section, and an interpretation section, as follows:

(a) The rules section of the register must contain all rules filed since the compilation and publication of the preceding issue of the register, together with the statements required under 2-4-305(1).

(b) The notice section of the register must contain all rulemaking notices filed with the secretary of state pursuant to 2-4-302 since the compilation and publication of the preceding register.

(c) The interpretation section of the register must contain all opinions of the attorney general and all declaratory rulings of agencies issued since the publication of the preceding register.

(4) Each issue of the register must contain the issue number and date of the register and a table of contents. Each page of the register must contain the issue number and date of the register of which it is a part. The secretary of state may include with the register information to help the user in relating the register to the ARM.

History: En. Sec. 6, Ch. 2, Ex. L. 1971; amd. Sec. 11, Ch. 285, L. 1977; R.C.M. 1947, 82-4206(2), (9); amd. Sec. 10, Ch. 243, L. 1979; amd. Sec. 3, Ch. 277, L. 1983; amd. Sec. 1, Ch. 580, L. 1987; amd. Sec. 9, Ch. 19, L. 1999; amd. Sec. 4, Ch. 396, L. 2001; amd. Sec. 3, Ch. 88, L. 2007; amd. Sec. 4, Ch. 21, L. 2009; amd. Sec. 2, Ch. 80, L. 2017.

Cross-References

Declaratory rulings, 2-4-501.

2-4-313. Copies — subscriptions — fees. (1) The secretary of state may make printed copies, subscriptions, supplements, or revisions to the ARM or the register available to any person for a fee set in accordance with subsection (4). Fees are not refundable.

(2) The secretary of state may charge agencies a filing fee for all material to be published in the ARM or the register.

(3) In addition to the fees authorized by 2-4-311 and other fees authorized by this section, the secretary of state may charge fees for internet or other computer-based services requested by state agencies, groups, or individuals.

(4) The secretary of state shall set and deposit the fees authorized in this section in accordance with 2-15-405.

History: En. Sec. 6, Ch. 2, Ex. L. 1971; amd. Sec. 11, Ch. 285, L. 1977; R.C.M. 1947, 82-4206(5) thru (8), (10), (11); amd. Sec. 11, Ch. 243, L. 1979; amd. Sec. 1, Ch. 163, L. 1983; amd. Sec. 3, Ch. 277, L. 1983; amd. Sec. 1, Ch. 397, L. 1985; amd. Sec. 2, Ch. 580, L. 1987; amd. Sec. 1, Ch. 6, Sp. L. January 1992; amd. Sec. 1, Ch. 411, L. 1993; amd. sec. 36, Ch. 308, L. 1995; amd. Sec. 5, Ch. 42, L. 1997; amd. Sec. 10, Ch. 19, L. 1999; amd. Sec. 5, Ch. 396, L. 2001; amd. Sec. 4, Ch. 88, L. 2007; amd. Sec. 4, Ch. 303, L. 2009; amd. Sec. 3, Ch. 80, L. 2017.

2-4-314. Biennial review by agencies — recommendations by committee. (1) Each agency shall at least biennially review its rules to determine if any new rule should be adopted or any existing rule should be modified or repealed.

(2) Subject to 2-4-112, the committee may recommend to the legislature those modifications, additions, or deletions of agency rulemaking authority which the committee considers necessary.

History: En. Sec. 4, Ch. 2, Ex. L. 1971; amd. Sec. 5, Ch. 410, L. 1975; amd. Sec. 1, Ch. 482, L. 1975; amd. Sec. 8, Ch. 285, L. 1977; R.C.M. 1947, 82-4204(6); amd. Sec. 4, Ch. 600, L. 1979; amd. Sec. 3, Ch. 381, L. 1981; amd. Sec. 1, Ch. 63, L. 1983; amd. Sec. 5, Ch. 102, L. 2021.

Compiler's Comments

2021 Amendment: Chapter 102 in (2) at beginning inserted "Subject to 2-4-112"; and made minor changes in style. Amendment effective March 31, 2021.

2-4-315. Petition for adoption, amendment, or repeal of rules. An interested person or, when the legislature is not in session, a member of the legislature on behalf of an interested person may petition an agency requesting the promulgation, amendment, or repeal of a rule. Each agency shall determine and prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition. Within 60 days after submission of a petition, the agency either shall deny the petition in writing or shall initiate rulemaking proceedings in accordance with 2-4-302 through 2-4-305. A decision to deny a petition or to initiate rulemaking proceedings must be in writing and based on record evidence. The written decision must include the reasons for the decision. Record evidence must include any evidence submitted by the petitioner on behalf of the petition and by the agency and interested persons in response to the petition. An agency may, but is not required to, conduct a hearing or oral presentation on the petition in order to develop a record and record evidence and to allow the petitioner and interested persons to present their views.

History: En. Sec. 7, Ch. 2, Ex. L. 1971; amd. Sec. 2, Ch. 236, L. 1974; amd. Sec. 12, Ch. 285, L. 1977; R.C.M. 1947, 82-4207; amd. Sec. 1, Ch. 110, L. 1997.

Cross-References

Adoption or amendment of rule — legislative authority, 2-4-412.

2-4-316 through 2-4-320 reserved.

2-4-321. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 1, Ch. 600, L. 1979.

2-4-322. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 2, Ch. 600, L. 1979.

2-4-323. Repealed. Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 3, Ch. 600, L. 1979.

Part 4 Legislative Review of Rules

2-4-401. Repealed. Sec. 49, Ch. 19, L. 1999.

History: (1)En. 82-4203.4 by Sec. 3, Ch. 410, L. 1975; amd. Sec. 6, Ch. 285, L. 1977; Sec. 82-4203.4, R.C.M. 1947; (2), (3)En. 82-4203.3 by Sec. 2, Ch. 410, L. 1975; amd. Sec. 9, Ch. 103, L. 1977; Sec. 82-4203.3, R.C.M. 1947; R.C.M. 1947, 82-4203.3, 82-4203.4; amd. Sec. 1, Ch. 302, L. 1993; amd. Sec. 7, Ch. 545, L. 1995.

2-4-402. Powers of committees — duty to review rules. (1) The administrative rule review committees shall review all proposed rules filed with the secretary of state.

(2) Subject to 2-4-112, the appropriate administrative rule review committee may:

(a) request and obtain an agency's rulemaking records for the purpose of reviewing compliance with 2-4-305;

(b) prepare written recommendations for the adoption, amendment, or rejection of a rule and submit those recommendations to the department proposing the rule and submit oral or written testimony at a rulemaking hearing;

(c) require that a rulemaking hearing be held in accordance with the provisions of 2-4-302 through 2-4-305;

(d) institute, intervene in, or otherwise participate in proceedings involving this chapter in the state and federal courts and administrative agencies;

(e) review the incidence and conduct of administrative proceedings under this chapter.

History: En. 82-4203.5 by Sec. 4, Ch. 410, L. 1975; amd. Sec. 7, Ch. 285, L. 1977; amd. Sec. 1, Ch. 561, L. 1977; R.C.M. 1947, 82-4203.5(1)(a) thru (1)(c); amd. Sec. 12, Ch. 243, L. 1979; amd. Sec. 11, Ch. 268, L. 1979; amd. Sec. 4, Ch. 381, L. 1981; amd. Sec. 2, Ch. 78, L. 1983; amd. Sec. 1, Ch. 572, L. 1989; amd. Sec. 11, Ch. 19, L. 1999; amd. Sec. 6, Ch. 102, L. 2021.

Compiler's Comments

2021 Amendment: Chapter 102 in (2) at beginning inserted "Subject to 2-4-112"; and made minor changes in style. Amendment effective March 31, 2021.

Cross-References

Necessity to be demonstrated in rulemaking record, 2-4-305(6).
Legislative interim committees — duties, 5-5-215.

2-4-403. Legislative intent — poll. (1) Subject to 2-4-112, if the legislature is not in session, the committee may poll all members of the legislature by mail to determine whether a proposed rule is consistent with the intent of the legislature.

(2) If 20 or more legislators object to a proposed rule, the committee shall poll the members of the legislature.

(3) The poll must include an opportunity for the agency to present a written justification for the proposed rule to the members of the legislature.

History: En. 82-4203.5 by Sec. 4, Ch. 410, L. 1975; amd. Sec. 7, Ch. 285, L. 1977; amd. Sec. 1, Ch. 561, L. 1977; R.C.M. 1947, 82-4203.5(1)(d), (1)(e); amd. Sec. 2, Ch. 87, L. 2007; amd. Sec. 7, Ch. 102, L. 2021.

Compiler's Comments

2021 Amendment: Chapter 102 in (1) at beginning inserted "Subject to 2-4-112"; and made minor changes in style. Amendment effective March 31, 2021.

Cross-References

Publication of poll results, 2-4-306.

2-4-404. Evidentiary value of legislative poll. If the appropriate administrative rule review committee has conducted a poll of the legislature in accordance with 2-4-403, the results of the poll must be admissible in any court proceeding involving the validity of the proposed rule or the validity of the adopted rule if the rule was adopted by the agency. If the poll determines that a majority of the members of both houses find that the proposed rule or adopted rule is contrary to the intent of the legislature, the proposed rule or adopted rule must be conclusively presumed to be contrary to the legislative intent in any court proceeding involving its validity.

History: En. Sec. 2, Ch. 561, L. 1977; R.C.M. 1947, 82-4205(3); amd. Sec. 12, Ch. 19, L. 1999; amd. Sec. 3, Ch. 87, L. 2007.

Cross-References

Poll results to be published with rule, 2-4-306.

2-4-405. Economic impact statement. (1) Subject to 2-4-112, on written request of the appropriate administrative rule review committee based upon the affirmative request of a majority of the members of the committee at an open meeting, an agency shall prepare a statement of the economic impact of the adoption, amendment, or repeal of a rule as proposed. The agency shall also prepare a statement upon receipt by the agency or the committee of a written request for a statement made by at least 15 legislators. If the request is received by the committee, the committee shall give the agency a copy of the request, and if the request is received by the agency, the agency shall give the committee a copy of the request. As an alternative, the committee may, by contract, prepare the estimate.

(2) Except to the extent that the request expressly waives any one or more of the following, the requested statement must include and the statement prepared by the committee may include:

(a) a description of the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;

(b) a description of the probable economic impact of the proposed rule upon affected classes of persons, including but not limited to providers of services under contracts with the state and affected small businesses, and quantifying, to the extent practicable, that impact;

(c) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenue;

(d) an analysis comparing the costs and benefits of the proposed rule to the costs and benefits of inaction;

(e) an analysis that determines whether there are less costly or less intrusive methods for achieving the purpose of the proposed rule;

(f) an analysis of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule;

(g) a determination as to whether the proposed rule represents an efficient allocation of public and private resources; and

(h) a quantification or description of the data upon which subsections (2)(a) through (2)(g) are based and an explanation of how the data was gathered.

(3) A request to an agency for a statement or a decision to contract for the preparation of a statement must be made prior to the final agency action on the rule. The statement must be filed with the appropriate administrative rule review committee within 3 months of the request or decision. A request or decision for an economic impact statement may be withdrawn at any time.

(4) Subject to 2-4-112, on receipt of an impact statement, the committee shall determine the sufficiency of the statement. If the committee determines that the statement is insufficient, the committee may return it to the agency or other person who prepared the statement and request that corrections or amendments be made. If the committee determines that the statement is sufficient, a notice, including a summary of the statement and indicating where a copy of the statement may be obtained, must be filed with the secretary of state for publication in the register by the agency preparing the statement or by the committee, if the statement is prepared under contract by the committee, and must be mailed to persons who have registered advance notice of the agency's rulemaking proceedings.

(5) This section does not apply to rulemaking pursuant to 2-4-303.

(6) The final adoption, amendment, or repeal of a rule is not subject to challenge in any court as a result of the inaccuracy or inadequacy of a statement required under this section.

(7) An environmental impact statement prepared pursuant to 75-1-201 that includes an analysis of the factors listed in this section satisfies the provisions of this section.

History: En. Sec. 1, Ch. 480, L. 1979; amd. Sec. 1, Ch. 665, L. 1983; (6)En. Sec. 2, Ch. 665, L. 1983; amd. Sec. 13, Ch. 19, L. 1999; amd. Sec. 1, Ch. 46, L. 1999; amd. Sec. 6, Ch. 339, L. 1999; amd. Sec. 2, Ch. 265, L. 2005; amd. Sec. 1, Ch. 189, L. 2007; amd. Sec. 8, Ch. 102, L. 2021.

Compiler's Comments

2021 Amendment: Chapter 102 in (1) at beginning of first sentence inserted "Subject to 2-4-112"; in (4) at beginning of first sentence inserted "Subject to 2-4-112"; and made minor changes in style. Amendment effective March 31, 2021.

Cross-References

Notice and hearing on rules, 2-4-302.

Publication, 2-4-306.

2-4-406. Committee objection to violation of authority for rule — effect. (1) Subject to 2-4-112, if the appropriate administrative rule review committee objects to all or some portion of a proposed or adopted rule because the committee considers it not to have been proposed or adopted in substantial compliance with 2-4-302, 2-4-303, and 2-4-305, the committee shall send a written objection to the agency that promulgated the rule. The objection must contain a concise statement of the committee's reasons for its action.

(2) Within 14 days after the mailing of a committee objection to a rule, the agency promulgating the rule shall respond in writing to the committee. After receipt of the response, the committee may withdraw or modify its objection.

(3) Subject to 2-4-112, if the committee fails to withdraw or substantially modify its objection to a rule, it may vote to send the objection to the secretary of state, who shall, upon receipt of the objection, publish the objection in the register adjacent to any notice of adoption of the rule and in the ARM adjacent to the rule, provided an agency response must also be published if requested by the agency. Costs of publication of the objection and the agency response must be paid by the committee.

(4) If an objection to all or a portion of a rule has been published pursuant to subsection (3), the agency bears the burden, in any action challenging the legality of the rule or portion of a rule objected to by the committee, of proving that the rule or portion of the rule objected to was adopted in substantial compliance with 2-4-302, 2-4-303, and 2-4-305. If a rule is invalidated by

court judgment because the agency failed to meet its burden of proof imposed by this subsection and the court finds that the rule was adopted in arbitrary and capricious disregard for the purposes of the authorizing statute, the court may award costs and reasonable attorney fees against the agency.

History: En. Sec. 1, Ch. 589, L. 1983; amd. Sec. 14, Ch. 19, L. 1999; amd. Sec. 9, Ch. 102, L. 2021.

Compiler's Comments

2021 Amendment: Chapter 102 in (1) at beginning of first sentence inserted "Subject to 2-4-112"; in (3) at beginning of first sentence inserted "Subject to 2-4-112"; and made minor changes in style. Amendment effective March 31, 2021.

2-4-407 through 2-4-409 reserved.

2-4-410. Report of litigation. Each agency shall report to the appropriate administrative rule review committee any judicial proceedings in which the construction or interpretation of any provision of this chapter is in issue and may report to the committee any proceeding in which the construction or interpretation of any rule of the agency is in issue. Subject to 2-4-112, on request of the committee, copies of documents filed in any proceeding in which the construction or interpretation of either this chapter or an agency rule is in issue must be made available to the committee by the agency involved.

History: En. Sec. 6, Ch. 381, L. 1981; amd. Sec. 15, Ch. 19, L. 1999; amd. Sec. 10, Ch. 102, L. 2021.

Compiler's Comments

2021 Amendment: Chapter 102 at beginning of last sentence inserted "Subject to 2-4-112"; and made minor changes in style. Amendment effective March 31, 2021.

2-4-411. Report. Subject to 2-4-112, the committee may recommend amendments to the Montana Administrative Procedure Act or the repeal, amendment, or adoption of a rule as provided in 2-4-412 and make other recommendations and reports as it considers advisable.

History: En. 82-4203.5 by Sec. 4, Ch. 410, L. 1975; amd. Sec. 7, Ch. 285, L. 1977; amd. Sec. 1, Ch. 561, L. 1977; R.C.M. 1947, 82-4203.5(2); amd. Sec. 3, Ch. 112, L. 1991; amd. Sec. 3, Ch. 349, L. 1993; amd. Sec. 11, Ch. 102, L. 2021.

Compiler's Comments

2021 Amendment: Chapter 102 at beginning inserted "Subject to 2-4-112"; and made minor changes in style. Amendment effective March 31, 2021.

2-4-412. Legislative review of rules — effect of failure to object. (1) (a) The legislature may, by bill, repeal any rule in the ARM. If a rule is repealed, the legislature shall in the bill state its objections to the repealed rule. If an agency adopts a new rule to replace the repealed rule, the agency shall adopt the new rule in accordance with the objections stated by the legislature in the bill. If the legislature does not repeal a rule filed with it before the adjournment of that regular session, the rule remains valid.

(b) The legislature may, by joint resolution, repeal a rule or amendment to a rule in the ARM that was adopted after final adjournment of the most recent regular legislative session. If an agency adopts a new rule to replace the repealed rule, the agency shall adopt the new rule in accordance with the objections stated by the legislature in the joint resolution. In order to be effective, the joint resolution must be passed during the regular session and not during a special session. After the regular session adjourns, the rule or the amendment to the rule that was adopted during the period between the two regular legislative sessions remains valid and may not be repealed using a joint resolution.

(2) The legislature may also by joint resolution request or advise or by bill direct the adoption, amendment, or repeal of any rule. If a change in a rule or the adoption of an additional rule is advised, requested, or directed to be made, the legislature shall in the joint resolution or bill state the nature of the change or the additional rule to be made and its reasons for the change or addition. The agency shall, in the manner provided in the Montana Administrative Procedure Act, adopt a new rule in accordance with the legislative direction in a bill.

(3) Rules and changes in rules made by agencies under subsection (2) must conform and be pursuant to statutory authority.

(4) Failure of the legislature or the appropriate administrative rule review committee to object in any manner to the adoption, amendment, or repeal of a rule is inadmissible in the courts of this state to prove the validity of any rule.

History: En. 82-4203.1 by Sec. 1, Ch. 239, L. 1973; amd. Sec. 1, Ch. 236, L. 1974; amd. Sec. 4, Ch. 285, L. 1977; R.C.M. 1947, 82-4203.1; amd. Sec. 5, Ch. 381, L. 1981; amd. Sec. 1, Ch. 164, L. 1983; amd. Sec. 16, Ch. 19, L. 1999; amd. Sec. 1, Ch. 288, L. 2021.

Compiler's Comments

2021 Amendment: Chapter 288 inserted (1)(b) authorizing the repeal of a rule or amendment in the Administrative Rules of Montana adopted after final adjournment of a regular legislative session by a joint resolution of the legislature at the next regular session; and made minor changes in style. Amendment effective April 12, 2021.

Effective Date: Section 2, Ch. 288, L. 2021, provided: “[This act] is effective on passage and approval.” Approved April 12, 2021, the date that the house and senate overrode the governor’s veto.

Applicability: Section 3, Ch. 288, L. 2021, provided: “[This act] applies to administrative rules adopted or amended on or after [the effective date of this act].” Effective April 12, 2021.

Cross-References

Declaratory rulings to be published, 2-3-113.

Petition for adoption, amendment, or repeal of rules, 2-4-315.

