

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 1.2.104, 1.3.307, and 1.3.309) PROPOSED AMENDMENT
pertaining to administrative rules)

TO: All Concerned Persons

1. On September 17, 2009, a public hearing will be held at 10:00 a.m. in the Secretary of State's Office Conference Room, Room 260, State Capitol Building, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Office of the Secretary of State no later than 5:00 p.m. on September 10, 2009, to advise us of the nature of the accommodation that you need. Please contact Jorge Quintana, P.O. Box 202801, Helena, Montana, 59620-2801; telephone (406) 444-5375; fax (406) 444-4249; TDD/Montana Relay Service (406) 444-9068; or e-mail jquintana@mt.gov.

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

1.2.104 ADMINISTRATIVE RULES BUREAU SERVICES FEES (1) The Secretary of State is required by law (2-4-312 and 2-4-313 , MCA) to distribute copies of the Administrative Rules of Montana and Montana Administrative Register and revisions thereto, free of charge, to certain federal, state, and county agencies. These agencies may opt to provide access to an electronic version of the current ARM and Register in lieu of receiving the print copy.

(2) The Secretary is also authorized to make available copies of the Administrative Rules of Montana, updates, and the Register to the public at prices fixed to cover publication and mailing costs.

(3) The cost for the Register is as follows:

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| (a) per calendar year (24 issues) | \$325.00 |
| (b) per issue | \$13.50 |

(4) The costs for the ARM are as follows:

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| (a) initial purchase of ARM | \$500.00 |
| (b) quarterly issues of updates to ARM, per calendar year | \$300.00 |

(c) partial year subscriptions will be prorated.

(5) Individual title charges are as follows:

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| (a) initial purchase of single-part title | \$60.00 |
| (b) initial purchase of multi-part titles: \$60.00 for the first part, plus \$40.00 for each additional part | |

(i) first part \$60.00

(ii) each additional part \$40.00

- (c) quarterly updates to individual titles, per calendar year \$60.00
- (6) The following miscellaneous fees are charged by ~~the ARM Bureau~~

Administrative Rules Services:

- (a) lapsed subscription fee for ARM (maximum of two years prior, per year) \$100.00
- (b) copy or fax fee \$1.00 per page/\$5.00 minimum
- (c) replacement binder for ARM \$5.00
- (7) ~~The ARM Bureau~~ Administrative Rules Services does not charge other state agencies for copies or faxes.

(8) All purchase and subscription fees must be paid in advance and are not refundable.

(9) To purchase any rules publication, contact ~~the ARM Bureau~~ Administrative Rules Services, at P.O. Box 202801, Helena MT 59620-2801, by phone (406) 444-2055, or e-mail ~~mt-rules@lists.mt.gov~~ sosarm@mt.gov.

AUTH: ~~2-15-306, 2-4-311, 2-4-312, 2-4-313, 2-15-401, 2-15-405, MCA~~
IMP: ~~2-4-305, 2-4-311, 2-4-312, 2-4-313, 2-15-405, MCA.~~

REASON: The 2007 Legislature amended 2-4-313(1), MCA, requiring ARM to be distributed electronically unless a hard copy is requested. Amending this rule is necessary to conform the rule to statute.

1.3.307 RULEMAKING, INTRODUCTION (1) through (4) remain the same.

(a) ~~Notice to~~ Contact with 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~~ contact the legislator who was the primary sponsor of the legislation. See 2-4-302(2)(d)(~~i~~), MCA.

(b) and (b)(i) remain the same.

(ii) ~~notice to~~ contact with sponsor as required;

(iii) through (c) remain the same.

(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~~ shall extend the response time in the event an amended or supplemental notice is filed to amend a statement of reasonable necessity, pursuant to 2-4-305(8)(c), MCA.

(ii) through (7) remain the same.

AUTH: 2-4-202, 2-15-401, MCA
IMP: 2-4-202, 2-4-302, 2-4-303, 2-4-305, MCA

REASON: The amendment is necessary due to the passage of SB 90 by the 2009 Legislature which clarified the requirements for contact with the primary sponsor of legislation in the administrative rulemaking process. SB 90 also requires agencies to allow additional time for comment when using an amended or supplemental notice to amend a statement of reasonable necessity. Amendments to this rule are necessary to conform the rule to statute.

1.3.309 RULEMAKING, PROPOSAL NOTICE (1) remains the same.

(a) An agency shall ~~notify~~ contact the 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 primary sponsor of each bill must be ~~notified~~ contacted. If the legislation affected more than one program, ~~notice~~ contact must be ~~given to~~ made with 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 initiated rulemaking under that legislation.

(i) When the bill sponsor ~~notice~~ contact requirements apply, the proposal notice must state the date of ~~primary sponsor notification~~, and the ~~method of notification used on which and the manner in which contact was made with the primary sponsor~~, per 2-4-302(1)(b), MCA.

(b) through (d)(ii) remain the same.

(e) Current or fFormer legislators who wish to ~~receive notice of~~ be contacted regarding 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.

(f) through (3)(a)(i) remain the same.

(ii) ~~Whenever possible the agency should include in the notice the full text of any rule proposed to be adopted, amended, or repealed. Where amendment of an existing rule is sought, the rule shall be set forth with proposed deletions interlined and proposed additions underlined.~~ 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) 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. If an agency uses an amended proposal notice to amend a statement of reasonable necessity, the agency shall allow additional response time as required in 2-4-305(8)(c), MCA.

(A) through (b)(ii) remain the same.

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

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

~~(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.~~

(4) and (4)(a) remain the same.

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

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

REASON: The amendments to section (1)(a) and (e) are necessary due to the passage of SB 90 by the 2009 Legislature which clarified requirements for contact with the primary sponsor of legislation in the administrative rulemaking process. Amendments to this rule are necessary to conform the rule to statute. Section (3)(a)(ii) is being amended to update formatting and content requirements for Register notices. Section (3)(a)(iii) is being amended to require agencies to allow additional time for comment when using an amended or supplemental notice to amend a statement of reasonable necessity. This amendment is necessary due to the passage of SB 123 by the 2009 Legislature. Section (3)(b)(v) is proposed to be deleted because it unnecessarily repeats language elsewhere in this rule.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Jorge Quintana, Office of the Secretary of State, P.O. Box 202801, Helena, Montana, 59620-2801, telephone (406) 444-5375, fax (406) 444-4249, or e-mail jquintana@mt.gov, and must be received no later than 5:00 p.m., September 24, 2009.

5. Jorge Quintana has been appointed to preside over and conduct this hearing.

6. The department 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 that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding business services, elections, notaries, records management, administrative rules, or uniform commercial code. 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 Rusty Harper, P.O. Box 202801, Helena, Montana 59620-2801, telephone (406) 444-5596, fax (406) 444-4263, e-mail rustyharper@mt.gov, or may be made by completing a request form at any rules hearing held by the Secretary of State's office.

7. 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.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. Senator Verdell Jackson (SB90), Senator Carolyn Squires (SB123),

and Representative Mike Phillips (HB475) were contacted on August 6 and August 11, 2009, by both telephone and e-mail.

/s/ Jorge Quintana

Jorge Quintana
Rule Reviewer

/s/ Linda McCulloch

Linda McCulloch
Secretary of State

Dated this 7th day of August, 2009.