

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF AMENDMENT,
1.3.101 and 1.3.102, the amendment) AMENDMENT AND TRANSFER,
and transfer of ARM 1.3.203 through) AND ADOPTION
1.3.210, and the adoption of New Rules I)
through III pertaining to model rules)

TO: All Concerned Persons

1. On May 22, 2008, the office of the Secretary of State published MAR Notice No. 44-2-145 pertaining to the public hearing on the proposed amendment, amendment and transfer, and adoption of the above-stated rules at page 1003 of the 2008 Montana Administrative Register, Issue Number 10.

2. The Secretary of State has amended and transferred the following rule as proposed:

<u>OLD</u>	<u>NEW</u>	
1.3.210	1.3.304	RULEMAKING, BIENNIAL REVIEW

3. The Secretary of State has adopted the following rules as proposed: New Rule II (ARM 1.3.302) and New Rule III (ARM 44.17.101).

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

1.3.101 INTRODUCTION AND DEFINITIONS (1) through (6) remain as proposed.

(7) "Template" refers to the Secretary of State's online forms depicting standard boilerplate language and layout for rulemaking petitions and notices published in the register, ~~and~~ The templates are available at www.armtemplates.com.

(a) and (b) remain as proposed.

AUTH: 2-4-202, MCA

IMP: 2-4-202, MCA

1.3.102 NOTICE OF AGENCY ACTION THAT IS OF SIGNIFICANT INTEREST TO THE PUBLIC (1) In accordance with 2-3-102 through 2-3-114, MCA, prior to making a final decision that is of significant interest to the public, the agency shall afford reasonable opportunity for public participation. Reasonable opportunity for pPublic participation may be afforded by:

(a) through (2) remain as proposed.

(3) ~~Public comment on any public matter, as limited in 2-3-103(1)(b), MCA, that is within the jurisdiction of an agency must be allowed at any public meeting as defined by 2-3-202, MCA, and in accordance with 2-3-203, MCA.~~ Public comment on any public matter within the jurisdiction of an agency must be allowed at any public meeting. See 2-3-103(1)(b), 2-3-202, and 2-3-203, MCA, for definitions of "public matter" and "meeting" and for the requirements applicable to opening and closing meetings to the public. The opportunity for public comment must be reflected on the meeting agenda and incorporated into the official minutes of the meeting. For purposes of this rule and 2-3-103(1)(b), MCA, contested case is defined at 2-4-102(4), MCA.

AUTH: 2-4-202, MCA

IMP: 2-3-103, 2-4-202, 2-4-302, MCA

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

1.3.203 (1.3.305) ORGANIZATIONAL RULE (1) remains as proposed.

(2) ~~The~~ An organizational rule must be reviewed biennially to determine whether it should be modified, per 2-4-314, MCA.

(3) ~~The~~ An organizational rule should contain the following as illustrated by template 305a (www.armtemplates.com):

(a) through (c) remain as proposed.

AUTH: 2-4-202, MCA

IMP: 2-4-201, 2-4-202, 2-4-314, MCA

1.3.204 (1.3.307) RULEMAKING, INTRODUCTION (1) remains as proposed.

(2) See 2-4-102, MCA, for the definition of "rule." Because of the difficulty in determining whether an agency action ~~falls within~~ meets the definition of rule, construe the exceptions narrowly and if in doubt, consult legal counsel.

Interpretative rules are statements issued by an agency to advise the public of the agency's construction of the statutes and rules which it administers. Interpretive rules may be made under the express or implied authority of a statute, but are advisory only and do not have the force of law.

(a) through (4)(c)(i) remain as proposed.

(ii) The agency shall schedule an ~~oral~~ hearing to be held at least 20 days from the publication of the notice of proposed action if the proposed rules affect matters which are of significant interest to the public as defined at 2-4-102(12), MCA.

(iii) Except where the proposed rules affect matters which are of significant interest to the public or unless a hearing is otherwise required by law, a public hearing must be held only if the agency's proposed action affects a substantive rule and a hearing is requested by either:

(A) through (5) remain as proposed.

(6) In the event of imminent peril to the public health, safety, or welfare, temporary emergency rules may be adopted without prior notice or hearing or after abbreviated procedures. However, special notice must be given to the appropriate administrative rule review committee. See ARM 1.3.313.

(7) ~~In the event~~ If a statute is becomes effective prior to October 1 of the year of enactment, temporary rules may be adopted with abbreviated notice or hearing, ~~but~~ and with at least 30 days' notice, ~~and~~ but are effective only through October 1 of that year. See ARM 1.3.313.

AUTH: 2-4-202, MCA

IMP: 2-4-202, 2-4-302, 2-4-303, 2-4-305, MCA

1.3.205 (1.3.308) RULEMAKING, PETITION TO ADOPT, AMEND, OR REPEAL RULE (1) remains as proposed.

(a) The petition shall be in writing, signed by or on behalf of the petitioner, and shall contain, as illustrated by template 308a (www.armtemplates.com), a detailed statement of:

(i) and (ii) remain as proposed.

(iii) ~~whether~~ the rule that the petitioner requests the agency to adopt, amend, or repeal. Where amendment of an existing rule is sought, the rule shall be set forth in the petition with proposed deletions interlined and proposed additions underlined; and

(iv) remains as proposed.

(b) Legislators may petition an agency on behalf of interested parties through an informal letter or memorandum. The petition should include the name of the person or a description of a the class of persons on whose behalf the legislator acts. Petitions filed by the appropriate administrative rule review committee of the Legislature need not be brought on the behalf of any specifically interested party. Any petition from the Legislature or its members should comply with (1)(a)(iii) and (iv).

(2) through (4) remain as proposed.

AUTH: 2-4-202, MCA

IMP: 2-4-202, 2-4-315, MCA

1.3.206 (1.3.309) RULEMAKING, PROPOSAL NOTICE (1) remains as proposed.

(a) An agency shall notify 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. If the legislation affected more than one program, notice must be given to 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 ~~done~~ initiated rulemaking under that legislation.

(i) through (2) remain as proposed.

(3) The contents of the notice shall include the following:;

(a) The notice of public hearing, as illustrated by template 309a (www.armtemplates.com), must include all notice items required by ~~2-4-302(4)~~ and 2-4-305, MCA, summarized as follows:

(i) The agency may issue a single public notice that it intends to adopt, amend, ~~and~~ or repeal several rules dealing with the same subject matter in a single proceeding.

(ii) and (iii) remain as proposed.

(A) The statement of reasonable necessity must be more substantive than stating ~~which~~ the statute ~~that~~ authorizeds rulemaking. A statute mandating that the agency adopt rules establishes the necessity for rules but does not, standing alone, constitute reasonable necessity for a rule.

(B) When an agency proposes to change or introduce a monetary amount that a person shall pay or will receive, such as a fee, cost, or benefit, the statement of reasonable necessity must state an estimate, if known, of the number of persons affected and the cumulative amount of the change for all persons.

(iv) remains as proposed.

(v) An agency may adopt a rule which adopts by reference any model code, federal agency rule, rule of any agency of this state, or other similar publication if the publication of the model code, rule, or other publication would be unduly cumbersome, expensive, or otherwise inexpedient. The notice must contain a citation to the material adopted by reference, a statement of its general subject matter content, and ~~must state~~ where a copy of the material may be obtained. Amendments to incorporated material are not effective unless adopted pursuant to 2-4-307, MCA.

(vi) through (b) remain as proposed.

(i) all notice items required by ~~2-4-302(4)~~ and 2-4-305, MCA;

(ii) and (iii) remain as proposed.

(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) remains as proposed.

~~(e)~~ (4) When a hearing has been properly requested per 2-4-302, MCA, the agency shall send notice of the hearing to persons who have requested a public hearing. Also, notice must be published in the register, per 2-4-302(2), MCA.

~~(f)~~ (a) As illustrated by template 309c (www.armtemplates.com), the notice shall state that the hearing is being held upon request of the requisite number of persons designated in the original notice, per 2-4-302(4), MCA, or the appropriate administrative rule review committee of the Legislature, ~~2-4-402(4)~~(2)(c), MCA, or a governmental agency or subdivision, or an association.

AUTH: 2-4-202, MCA

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

1.3.207 (1.3.311) RULEMAKING, OPPORTUNITY TO BE HEARD

(1) When the subject matter of a proposed rule is not of significant interest to the public, or an agency is not otherwise required and does not wish to hold a public hearing, the opportunity to submit written comments must be ~~permitted~~ provided.

(a) remains as proposed.

(b) The agency shall notify all persons who submit written comments that a list of interested persons exists and provide each commenter the opportunity to have ~~their~~ the commenter's name added to that list.

(2) through (2)(d)(iii) remain as proposed.

(e) The presiding officer or rulemaker has the right to ~~question or~~ examine any witnesses making a statement at the hearing. The presiding officer may, in the officer's discretion, permit other persons to examine witnesses.

(f) through (i) remain as proposed.

(j) A record must be made of all the proceedings, either in the form of minutes or a verbatim written, electronic, or mechanical record.

(k) The presiding officer shall, within a reasonable time after the hearing, provide the rulemakers with a written summary of statements given and exhibits received and a report of the officer's observations of physical experiments, demonstrations, and exhibits.

(3) remains as proposed.

AUTH: 2-4-202, MCA

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

1.3.208 (1.3.312) RULEMAKING, AGENCY ACTION (1) Thirty days after publication of the proposal notice and following receipt of the presiding officer's report, the rulemaker may adopt, amend, or repeal rules covered by the notice of intended action.

(2) through (2)(a)(i) remain as proposed.

(ii) if the rule adopts a model code, rule, or other publication by reference, a citation to the material adopted, its year, a statement of ~~the~~ its general subject matter ~~thereof~~, and where a copy of the material may be obtained. The material adopted by reference need not be published if publication would be unduly cumbersome, expensive, or otherwise inexpedient. Upon request of the Secretary of State, a copy of the omitted material must be filed with the Secretary of State, per-2-4-307(2), MCA;

~~(A) State agencies shall retain copies of all versions of previously incorporated material, for research and reference purposes, pursuant to state of Montana records and information management requirements.~~

(iii) a statement of the principal reasons presented by interested persons for and against the adoption, amendment, or repeal of a rule ~~that was presented by interested persons~~. The statement also must include the agency's reasons for overruling ~~the~~ any considerations urged against the agency action. 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, the differences must be described in the statement of reasons for and against the agency action. The statement may be omitted if no written or oral submissions were presented, per 2-4-305(1), MCA. See Patterson v. Montana Department of Revenue, 557 P.2d 798 (1976);

(iv) through (4) remain as proposed.

(5) If an agency decides not to adopt, amend, or repeal the rules covered by the notice of intended action, the agency can publish a notice of agency decision

stating why the action will not be adopted finalized at this that time, and whether the agency intends to repropose the changes in a subsequent rulemaking cycle. See template 312d (www.armtemplates.com).

(6) Notice of agency action must be published within six months of the date on which notice of the proposed action was published, per 2-4-305(7), MCA.

AUTH: 2-4-202, MCA

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

1.3.209 (1.3.313) RULEMAKING, TEMPORARY EMERGENCY RULES AND TEMPORARY RULES

(1) If an agency finds that circumstances exist that truly and clearly constitute an imminent peril to the public health, safety, or welfare, that the circumstances cannot be averted or remedied by any other administrative act, and that the circumstances require a rulemaking action upon fewer than 30 days' notice, it may adopt a temporary emergency rule without prior notice or hearing or, as illustrated by template 313a (www.armtemplates.com), upon any abbreviated notice and hearing that it finds practicable, per 2-4-303(1), MCA.

(a) remains as proposed.

(i) file with the Secretary of State a copy of the emergency rule containing a statement in writing of its reasons for finding that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon fewer than 30 days' notice, per 2-4-306(4), MCA;

(ii) provide special notice of its intent to the appropriate administrative rule review committee, which is accomplished by the Secretary of State's office providing a copy of the notice to the Legislative Services Division;

(iii) take appropriate and extraordinary measures to make emergency rules known to persons who may be affected by them, per 2-4-306(4), MCA, including delivery of copies of the rule to a state wire service and to any other news media the agency considers appropriate. Extraordinary measures include, but are not limited to, immediate personal delivery of copies of the rule to affected parties, and immediate delivery of copies of the rule to associations whose members are affected, per 2-3-105, MCA.

(b) through (d) remain as proposed.

(e) If no longer necessary, an emergency rule may be repealed before the end of the 120-day effectiveness period. See template 313b (www.armtemplates.com).

(2) Temporary rules implementing a statute which becomes effective prior to October 1 of the year of enactment may be adopted through abbreviated procedures determined practicable by the agency, as illustrated by templates 313c and 313d (www.armtemplates.com).

(a) The temporary rules cannot become effective until at least 30 days after the notice of proposal to adopt is published. Per 2-4-306, MCA, temporary rules can be effective upon filing the adoption notice, or at a stated date following publication.

(b) ~~The~~ Temporary rules expire October 1 of the year adopted.

(c) remains as proposed.

AUTH: 2-4-202, MCA

IMP: 2-4-202, 2-4-303, 2-4-306, MCA

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

NEW RULE I (1.3.301) INTRODUCTION AND DEFINITIONS (1) remains as proposed.

(2) The Montana Administrative Procedure Act is referred to as "MAPA" and includes 2-4-101 through 2-4-711, MCA. MAPA ~~outlines~~ states procedures that agencies must follow when:

(a) through (c) remain as proposed.

(3) Each agency subject to MAPA must adopt rules describing its organization and procedures, per 2-4-201, MCA. Section 2-4-202, MCA, directs the Secretary of State to prepare a model form for a rule describing the organization of agencies and model rules of practice for agency guidance in fulfilling these requirements. The model rules have been adopted for that purpose. ~~The model rules may be incorporated by reference to the model rules.~~ Agencies may adopt the model rules by incorporating them by reference. Subsequent amendments may be adopted only by following the rulemaking procedure of MAPA. See 2-4-307, MCA.

(4) remains as proposed.

(5) "Template" refers to the Secretary of State's online forms depicting standard boilerplate language and layout for rulemaking petitions and notices published in the register, ~~and~~. The forms are available at www.armtemplates.com. The templates illustrate the Secretary of State's model rules in this subchapter.

(a) and (b) remain as proposed.

AUTH: 2-4-202, MCA

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

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

COMMENT #1: The commenter recommended revising "which" to "that," "shall" to "must," and "must" to "shall," to conform to the style of the Montana Legislative Services Division Bill Drafting Manual. The commenter also submitted handwritten suggestions to change rule language.

RESPONSE #1: The department appreciates the suggestion related to style, but the language used in the Administrative Rules is not required to conform to the guidelines of the Bill Drafting Manual. Per 2-4-306, MCA, the Secretary of State may prescribe the format, style, and arrangement for notices and rules. Per ARM 1.2.215(2), "Rules should be short and written in a simple, clear and direct style that is easily understood by the user." The model rules will continue to use common language that is more understandable to users who may not necessarily be familiar with bill language. The Bill Drafting Manual requirements also do not correspond to

the requirements of the Gregg Reference Manual, tenth edition, which is the style manual incorporated by reference in ARM 1.2.519. Based on the commenter's handwritten suggestions, the department made many other suggested changes to rule language.

COMMENT #2: The commenter wrote that the existing definition of "agency" in ARM 1.3.101 may be confusing. It appears that the intent of the rule is to point out that the definition applicable to these rules is broader than the definition that is applicable to MAPA rules; however, it might be clearer to state that.

RESPONSE #2: The commenter's rephrasing of the intention is accurate, but the department declines to change the existing text, which the department believes is also expressed accurately. The language has remained unchanged since 1999 without causing confusion for users.

COMMENT #3: In ARM 1.3.102(3), the commenter suggested rewriting the first sentence because the current wording is difficult to follow. The commenter offered new language.

RESPONSE #3: The department agrees and will rewrite the first sentence as suggested.

COMMENT #4: In ARM 1.3.204(2)(a), the commentor suggested adding language regarding bylaws and internal procedures also being exempt from what must be in rule, and that the list of examples should not be exclusive: "Among other limitations in 2-4-102, MCA, 'rule' does not include statements concerning only the internal management of an agency or state government and not affecting private rights or procedures available to the public, including but not limited to internal management procedures, bylaws, or rules implementing the state personnel classification plan, the state wage and salary plan, or the statewide budgeting and accounting system."

RESPONSE #4: The suggested language "including but not limited to" or "bylaws" is not found in 2-4-102, MCA. The department does make clear that the limitations cited in the rule are not meant to be exclusive. Therefore, the department declines to add the additional language.

COMMENT #5: In ARM 1.3.205(1)(a)(iii), the commenter noted that there appears to be a mistake in the proposed addition of the word "whether" to the beginning of this subsection. Making this change does not appear to make sense and appears to be inconsistent with the apparent intent of the subsection, which is to require a petitioner for rulemaking to describe the proposed new rule, amendment, or rule proposed for repeal.

RESPONSE #5: The department agrees and will strike the word "whether."

COMMENT #6: The commenter noted that ARM 1.3.206(2) (dealing with an adoption notice) seems to relate more to ARM 1.3.208 than to ARM 1.3.206

(specifying requirements for proposal notices). The commenter recommended moving this section to ARM 1.3.208.

RESPONSE #6: The department believes it is helpful for agencies to know, when preparing proposal notices, that they have six months to adopt them. The department agrees that this information would also apply to the topic in ARM 1.3.208. Therefore, the department will keep the section in ARM 1.3.206, and will also add it to ARM 1.3.208.

COMMENT #7: Regarding ARM 1.3.206(3)(a), the commenter wrote that some statutory requirements outside of 2-4-302, MCA, are being referenced, but the statute itself was not.

RESPONSE #7: The department agrees and is adding language to that subsection to reflect that requirements in 2-4-305, MCA, are also being summarized.

COMMENT #8: In ARM 1.3.206(3)(a)(ii), the commenter noted that the change appears to prohibit the use of summaries of the proposed rule in all cases, and asks for confirmation that this change does not prohibit use of incorporation by reference. Summaries and paraphrasing help the audience, the public, and other agencies and their staff understand the nature and major changes proposed by an agency; under the new rule they will have to read sometimes complicated and lengthy rule provisions in order to distill what impact the changes will have on them, a difficult if not impossible task. The agency makes the full text available to interested persons by mail and on their web sites, which can be read in the context of the agency's summary. The commenter stressed that the proposed stricken language should not be deleted.

RESPONSE #8: The stricken language refers only to the rule text itself, and not to summarizing or rephrasing in the rest of the notice. This change reflects a long-standing and common practice. It is imperative to users and the legal process that all proposed rule changes are specifically shown in detail. The proposed new language (regarding unchanged sections being listed as "remains the same") allows for space to be saved while still accounting for each component of the rule. It is also common practice for agencies to summarize and paraphrase the rule content and proposed changes in the statement of reasonable necessity, and that practice is still encouraged by the department when it will help the public and other users. This change does not affect an agency's ability to incorporate lengthy materials by reference, as granted by 2-4-307, MCA, and implemented in ARM 1.2.210. The new language will remain as proposed.

COMMENT #9: Regarding ARM 1.3.206(3)(a)(iii)(A), the commenter asked: Why would a statutory requirement to adopt a rule not constitute the reasonable necessity for adopting such a rule? The proposed language, "A statute mandating that the agency adopt rules establishes the necessity for rules but does not, standing alone, constitute reasonable necessity for a rule," is blatantly contradictory. If the statute

establishes the "necessity for rules," then how can it not constitute the "necessity for a rule?" Please explain the reasoning behind this additional requirement.

RESPONSE #9: The added rule language is not an additional requirement; it is from 2-4-305(6)(b), MCA, which states that a rule change is not valid or effective unless it is "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." [emphasis added] Based on agencies' experience that the Legislative Services Division has found statements of reasonable necessity not thorough enough, the department thought it would be useful to call attention to this statute by referencing its requirements in the model rules.

COMMENT #10: Regarding ARM 1.3.206(3)(a)(iii)(B), the commenter noted that the new language regarding fee changes contained a requirement that is not in statute.

RESPONSE #10: The department agrees and is adding the language "if known" to "the statement of reasonable necessity must state an estimate, *if known*, of the number of persons affected. . ." in order to follow statute.

COMMENT #11: In ARM 1.3.206(3)(c), commenters recommended renumbering (c) as (4) and (c)(i) as (4)(a) because the language in (c) does not follow from (3).

RESPONSE #11: The department agrees and will renumber as suggested.

COMMENT #12: The commenter noted that in ARM 1.3.206(3)(c)(i), there appears to be a mistake in the proposed correction to the statutory citation. The commenter believes the correct citation is 2-4-402(2)(c), MCA, rather than 2-4-402(1)(c), MCA.

RESPONSE #12: The department agrees and will make the change.

COMMENT #13: The commenter thanked Administrative Rules Services for the ongoing improvements to the rules process, and suggested that in ARM 1.3.207(2)(j) "electronic" be added as an option for recording.

RESPONSE #13: The department appreciates the commenter's feedback, and will add "electronic" to the options.

COMMENT #14: In ARM 1.3.208, the commenter suggested that 2-4-307, MCA, be added to the list of implemented sections, because the rule expressly references those requirements.

RESPONSE #14: The department agrees and this statute will be added to the IMP.

COMMENT #15: In ARM 1.3.208(2)(a)(i), the commenter asked: Can a reference to the page number of the ARM on which the rule appears constitute the reference to the notice of the proposed agency action in which the text was printed? In order to provide the easiest reference for the audience, the rule should require both: "(i) either the text of the rule adopted or amended, or reference to the notice of proposed agency action in which the text of the proposed rule or rule as proposed to be amended was printed in full, ~~or~~ with reference to the page number of the Administrative Rules of Montana on which the rule appears;..."

RESPONSE #15: Because they are two separate publications, the page number in the Administrative Rules of Montana (ARM) is not analogous to the page number of the proposal notice in the Montana Administrative Register (register). The first paragraph of each adoption notice references the page number of the proposal notice in the register, which is a different procedure than what this rule covers. Striking this language will not result in a change in process. This rule relates to adoption notices, and agencies do not currently reference ARM page numbers in adoption notices. This change will put common practice into rule. Additionally, there are more users of the online version of the ARM, and that system does not have page numbers, only rule numbers.

COMMENT #16: Regarding ARM 1.3.208, multiple commenters questioned the proposed new language in (2)(a)(ii)(A) pertaining to agencies retaining copies of material they incorporated by reference. The commentors were concerned that agencies would be required to keep material from other publishers, that it was not part of an agency's records management responsibility, and that the statutory authority for the added language is not listed.

RESPONSE #16: The department agrees and will strike the language in ARM 1.3.208(2)(a)(ii)(A). The intent was that an agency would keep materials that it generated and subsequently incorporated by reference in a rule. It was the department's goal that an agency would always have its own internal publications available for research, court cases, and so forth many years after that version had been incorporated by reference in rule. The Secretary of State's office had not intended for agencies to retain versions of federal material, or material from other sources, or previously published notices. The department will work with its Records and Information Management Bureau to develop a retention schedule for rulemaking materials.

COMMENT #17: Regarding ARM 1.3.209(2)(a), the commenter wrote that the existing language, stating that "temporary rules cannot become effective until at least 30 days after the notice of proposal to adopt is published," appears to be

inconsistent with 2-4-303(2), MCA, and ARM 1.3.208(4), which state that a temporary rule may not be *filed* with the Secretary of State until at least 30 days have passed since publication of the notice of proposed rulemaking and that an agency action is effective the day *following* publication of notice in the register.

RESPONSE #17: Per 2-4-306(4)(b)(i), MCA, a temporary rule is effective immediately upon filing the adoption notice with the Secretary of State or at a stated date following publication in the register. Because the temporary rule is effective upon filing the adoption notice, the rule *can* be *filed* 30 days after the proposal notice is published, which would make the rule *effective* 30 days after the proposal notice was published. In order to clarify the rule, language will be added to ARM 1.3.209(2)(a) as follows: "(a) The temporary rules cannot become effective until at least 30 days after the notice of proposal to adopt is published. Per 2-4-306, MCA, temporary rules can be effective upon filing the adoption notice, or at a stated date following publication."

/s/ Brad Johnson
BRAD JOHNSON
Secretary of State

/s/ Janice Doggett
JANICE DOGGETT
Rule Reviewer

Dated this 21st day of July 2008.