

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF AMENDMENT,
ARM 1.2.102, 1.2.202, 1.2.204,)	TRANSFER, ADOPTION, AND
1.2.205, 1.2.206, 1.2.210,)	REPEAL
1.2.211, 1.2.212, 1.2.214,)	
1.2.216, 1.2.217, 1.2.218,)	
1.2.219, 1.2.401, 1.2.402,)	
1.2.404, 1.2.411, 1.2.422,)	
1.2.423, and 1.2.519, the)	
amendment and transfer of ARM)	
1.2.321, 1.2.322, 1.2.412, and)	
1.2.421, the adoption of New)	
Rules I through III, and the)	
repeal of ARM 1.2.301 regarding)	
the Administrative Rules of)	
Montana, Montana Administrative)	
Register, rule formatting,)	
incorporation by reference, fees)	

TO: All Concerned Persons

1. On November 10, 2005, the Secretary of State published MAR Notice No. 44-2-131 regarding the public hearing on the proposed amendment, transfer, adoption, and repeal of the above-stated rules at page 2211 of the 2005 Montana Administrative Register, issue number 21.

2. The Secretary of State has amended ARM 1.2.102, 1.2.210, 1.2.211, 1.2.212, 1.2.214, 1.2.216, 1.2.218, 1.2.219, 1.2.402, 1.2.411, 1.2.422, and 1.2.423; amended and transferred ARM 1.2.412 (1.2.229) and 1.2.421 (1.2.104); adopted New Rules I (1.2.105), II (1.2.207), and III (1.2.220); and repealed ARM 1.2.301 exactly as proposed.

3. The Secretary of State has amended the following rules as proposed but with the following changes, stricken matter interlined, new matter underlined:

1.2.202 ARRANGEMENT OF THE ADMINISTRATIVE RULES OF MONTANA (1) and (2) remain as proposed.

(a) Reserved chapter numbers are indicated in the title's chapter table of contents. An unnumbered page is placed in the ARM indicating where a reserved chapter falls.

(b) and (c) remain as proposed.

(4) through (7) remain as proposed, but are renumbered (3) through (6).

1.2.204 ARRANGEMENT OF TITLE CONTENT (1) and (1)(a) remain as proposed.

(b) ~~followed by~~ a chapter table of contents of all chapters found in Title 1 through Title 44; and

(c) through (2)(f) remain as proposed.

(g) ~~following the repealed rules table,~~ an old-to-new numbering table following the repealed rule table indicating the old rule numbers in ascending order assigned before recodification in 1980 and the new three-part rule number assigned as a result of recodification; and

(h) remains as proposed.

1.2.205 RULE TYPES AND LOCATIONS (1) There are two ways to categorize rules+, by subject matter and by duration.

(2) through (3)(b)(ii) remain as proposed.

(iii) to automatically expire 120 days after their effective date;

(iv) remains as proposed.

(v) may able to be adopted with limited or no prior public notice.

(c) through (3)(c)(ii) remain as proposed.

1.2.206 ARM PAGE UPDATES (1) Changes to the rules may include amendments to existing rules, the addition of new rules, transfer of existing rules, or repeal of rules. When changes are made to the rules, the affected pages of the ARM are replaced quarterly to include the changes. These new pages are referred to as replacement pages. ~~All replacement pages show the quarterly publication date in the footer~~ The footer date included on all replacement pages indicates the last day of the quarter for which that page has been printed.

(a) through (e) remain as proposed.

(2) If there is a discrepancy between the rule text in the ARM and the text in the Register proposal ~~and~~ or adoption notices, the text of the Register notices prevails as the correct text.

1.2.217 RULE HISTORY NOTES (1) through (1)(c)(iv) remain as proposed.

(v) EMERG denotes emergency action; ~~and~~

(A) Register information and the effective date are not given for emergency actions; and

(vi) through (3) remain as proposed.

1.2.401 PROCEDURES FOR FILING PROPOSED RULE CHANGES

(1) and (2) remain as proposed.

(4) and (5) remain as proposed, but are renumbered (3) and (4).

1.2.404 ADMINISTRATIVE ORDER (1) When the notice of proposed action results in the adoption, amendment, transfer, or repeal of a rule, the action must be certified and transmitted to the secretary of state for filing and publication. An administrative order must be filed with each adoption notice. This certifies and confirms the agency's action. Replacement pages do not need an administrative order.

(2) and (3) remain as proposed.

1.2.519 BASIC FORMAT REQUIREMENTS (1) through (1)(g) remain as proposed.

(h) For capitalization, hyphenation, punctuation, and grammar requirements, refer to the Gregg Reference Manual, ~~tenth edition, which is incorporated by reference.~~ The Secretary of State adopts and incorporates by reference the Gregg Reference Manual, tenth edition, which sets forth rules of style, grammar, usage, and formatting. A copy of the manual may be obtained ~~is available~~ from McGraw-Hill/Irwin, 1221 Avenue of the Americas, New York, NY, 10020;

(i) through (1)(m)(i) remain as proposed.

Sample forms 1 through 11 are repealed as proposed.

4. The Secretary of State has amended and transferred the following rules as proposed but with the following changes, stricken matter interlined, new matter underlined:

1.2.321 (1.2.225) OLD-TO-NEW NUMBERING TABLE (1) remains as proposed.

1.2.322 (1.2.226) NEW-TO-OLD NUMBERING TABLE (1) remains as proposed.

5. A public hearing was held on December 1, 2005 to consider the proposed amendment, transfer, adoption, and repeal. Oral and written testimony is summarized as follows with the response of the Secretary of State:

COMMENT 1: Two comments were received to allow for double earmarking. It is a useful drafting tool and is used by Congress, federal agencies in the Code of Federal Regulations and the Montana Legislature. The prohibition on double earmarking would create several difficulties that are unnecessary, such as the creation of ambiguity in citation and cross-referencing, and could create delays in the approval of agency rules by a federal agency.

RESPONSE 1: The Office disagrees. The proposed text places in rule what is current practice and will provide consistency in the format of the Administrative Rules of Montana by ensuring all agencies follow the same format requirements. The Secretary of State's Office existing format and style policy has been developed with the general public in mind to ensure ease of use and readability of the rules for those individuals and organizations directly impacted.

COMMENT 2: One commenter asked if each reserved chapter page will now have a page number.

RESPONSE 2: The proposed rule does not intend to imply that each reserved chapter page will have a page number. The proposed text in ARM 1.2.202(2)(a) has been amended to provide this clarification.

COMMENT 3: One commenter noted missing subsections in ARM 1.2.202 and 1.2.401.

RESPONSE 3: The Office agrees and has amended ARM 1.2.202 and 1.2.401 accordingly.

COMMENT 4: One commenter asked if ARM 1.2.202(4)(a)(i) should be earmarked (c) instead of (i).

RESPONSE 4: The Office has reviewed the proposed rule and it is correctly earmarked. Subsection (i) will go with (a).

COMMENT 5: One commenter questioned when proposed format changes to ARM replacement pages are to occur.

RESPONSE 5: The proposed format changes will be effective with the first quarter ARM replacement pages in 2006, due March 31, 2006.

COMMENT 6: One commenter noted in ARM 1.2.321 and 1.2.322 that hyphens should be added to the catchphrase to make it consistent with the text.

RESPONSE 6: The Office agrees and has amended ARM 1.2.321 and 1.2.322 accordingly.

COMMENT 7: One commenter questioned when proposed basic format changes will be effective for rule documents submitted for publication in the Register and ARM pages.

RESPONSE 7: The proposed basic format changes will be effective for all rule documents submitted for publication beginning with the first issue of the Register in 2006. For ARM replacement pages, the intent is to apply the basic format changes as pages are replaced and then to all pages within the applicable subchapter. The changes will be effective for the first quarter ARM replacement pages in 2006, due March 31, 2006. Agencies will apply the format changes to the subchapter in which the adopted rule falls, thus submitting whole subchapters as replacement pages.

COMMENT 8: One commenter inquired about rule text asking if "quarters" should be changed to "issues" of the Register, and if the correct reference was "repealed rule" or the "repealed rules" table?

RESPONSE 8: The text in ARM 1.2.102(3) is correct with "quarters", and the correct reference to the table in ARM 1.2.204(2)(f) and (g) is "repealed rule" table. The rule has been amended accordingly.

COMMENT 9: One commenter inquired if it is permissible to include text following a colon without earmarking and when earmarking is necessary.

RESPONSE 9: The comments do not pertain to ARM 1.2.205(1) content, but are directed at the format of the rule. The Office has amended the rule to follow format requirements.

COMMENT 10: One comment noted that in ARM 1.2.206(1) the usage of "publication date" did not seem to follow the same line of thinking as the usage of "publication date" in MAR Notice No. 44-1-103 published in Issue 19 where the publication date is the date the Register comes out. Perhaps it could use language such as "The footer date included on all replacement pages indicates the last day of the quarter for which that page has been printed." The same commenter questioned if "and" should be changed to "or" to clarify the discrepancy doesn't need to appear in both the proposal and adoption notice.

RESPONSE 10: The Office agrees and has amended ARM 1.2.206(1) accordingly.

COMMENT 11: One commenter inquired if legislative agency reorganization rules will still not use an effective date and asked if all the rules' history note information must be included for emergency rules?

RESPONSE 11: The Legislative agency reorganization rules do have an effective date, but will still not have Register information. Emergency rules are not published in the ARM and therefore do not include all rule history information as described in the proposed rule. The Office has amended ARM 1.2.217 to provide this clarification.

COMMENT 12: One commenter inquired if the provision to require that an adjective or interpretive rule be stated as such in the Register would be a disservice to those who are regulated by the rule.

RESPONSE 12: The Office disagrees. The subsection removed remains a statutory requirement in 2-4-308, MCA.

COMMENT 13: One commenter asked if ARM 1.2.402 should include provisions for rules impacted by legislative reorganization. This could explain the format the Secretary of State wants these notices in, what information is to be included to update the ARM, etc.

RESPONSE 13: The Office disagrees. The rule relates only to replacement pages and not to the publication of notices. Procedures on how to draft rule notices are not covered in this rulemaking notice. The Office acknowledges such "how to" information can be a valuable tool for agencies and will include such information in the formatting guidelines manual currently being drafted.

COMMENT 14: One commenter asked if transfers should be included in ARM 1.2.404.

RESPONSE 14: The Office agrees and has amended ARM 1.2.404 accordingly.

COMMENT 15: One commenter noted proposed text did not follow style requirements in ARM 1.2.210.

RESPONSE 15: The Office agrees and has amended ARM 1.2.519(1)(h) accordingly.

COMMENT 16: One commenter inquired, once the Gregg Reference Manual is adopted by reference, if the removal or insertion of a hyphen to conform to the style guidelines of the Manual constitute an amendment.

RESPONSE 16: The Office considers the removal or insertion of a hyphen to conform to style guidelines as minor editing and an amendment is not needed.

COMMENT 17: One informational comment received confirmed the agencies would not be charged a filing fee for quarterly replacement pages submitted for publication in the ARM. The commenter noted the number of replacement pages will increase as agencies will submit whole subchapters versus only the pages changed by rule actions with the proposed process of making format changes.

RESPONSE 17: The Office confirms that agencies are charged a filing fee for each page to be published in the Register. The agencies are not charged a filing fee for each replacement page submitted for publication in the ARM.

6. These amendments, transfers, adoptions, and repeal are effective January 1, 2006. All Notices submitted for the 2006 Montana Administrative Register and replacement pages submitted for the 2006 Administrative Rules of Montana must adhere to these rules.

/s/ Brad Johnson
BRAD JOHNSON
Secretary of State

/s/ H. Elwood English
H. ELWOOD ENGLISH
Rule Reviewer

Dated this 12th day of December 2005.