

**BOARD OF ENVIRONMENTAL REVIEW
AGENDA ITEM**

EXECUTIVE SUMMARY FOR ACTION ON RULE ADOPTION

Agenda # III.A.2.

Agenda Item Summary: The Department requests that the Board initiate rulemaking to amend ARM 17.4.101 pertaining to model rules.

List of Affected Rules: This rulemaking would amend ARM 17.4.101.

Affected Parties Summary: All members of the public and the regulated community.

Scope of Proposed Proceeding: The Department requests that the Board adopt the proposed amendments to ARM 17.4.101.

Background: Effective October 1, 2007, House Bill 70 transferred to the Secretary of State some model rules previously assigned to the Attorney General. The rules transferred to the Secretary of State describe the organization of agencies and model rules of practice for agencies to use as a guide for the rulemaking process and in fulfilling the provisions of 2-4-201, MCA, which require agencies to adopt rules describing their organization and rules of practice. On July 31, 2008, and August 14, 2008, the Secretary of State and Attorney General, respectively, finalized rulemakings implementing House Bill 70. In making these rule changes, the Attorney General and Secretary of State revised their rules, adopted certain new rules, and repealed a rule, to conform the rules to the transfer of rules to the Secretary of State, define new terms, provide for use of online template forms, update the rules to conform to recent legislation and current rule drafting style, clarify the rules, reorganize the rules, and add certain statutory requirements to minimize the need for readers to rely on multiple sources in order to understand the administrative procedures.

Hearing Information: No public hearing contemplated.

Board Options: The Board may:

1. Initiate rulemaking and issue the attached Notice of Proposed Amendment (No Public Hearing Contemplated);
2. Modify the Notice and initiate rulemaking; or
3. Determine that amendment of the rule is not appropriate and deny the Department's request to amend the rule.

DEQ Recommendation: The Department recommends that the Board adopt the amendments to ARM 17.4.101 as proposed in the Notice of Proposed Amendment.

Enclosures:

1. Draft Notice of Proposed Amendment.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
AND THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF PROPOSED
17.4.101 pertaining to model rules)	AMENDMENT
)	
)	(MODEL RULES)
)	
)	NO PUBLIC HEARING
)	CONTEMPLATED

TO: All Concerned Persons

1. On _____, 2009, the Board of Environmental Review and the Department of Environmental Quality propose to amend the above-stated rule.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., [date], to advise us of the nature of the accommodation you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

3. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

17.4.101 MODEL RULES (1) The Department of Environmental Quality and the Board of Environmental Review herein adopt and incorporate the Attorney General's Model Organizational and Procedural Rules, ARM ~~4.3.101, 4.3.102, and 1.3.201, 1.3.202, 1.3.211 through 1.3.224, and 1.3.226 through 1.3.233, effective August 15, 2008,~~ and the Secretary of State's Organizational and Procedural Rules, ARM 1.3.101, 1.3.102, 1.3.301, 1.3.302, 1.3.304, 1.3.305, 1.3.307 through 1.3.309, 1.3.311 through 1.3.313, and 44.17.101, as ~~amended effective June 4, 1999 August 1, 2008,~~ including the ~~appendix of~~ sample forms which follows the Attorney General's model rules, except as modified by (2) and (3) ~~below~~, as authorized by 2-4-302, MCA.

(2) The incorporation of ARM ~~4.3.206~~ 1.3.309 is modified by the addition of the rules in subchapter 2 of this chapter which incorporate requirements of statutes administered by the department and board.

(3) The incorporation of ARM ~~4.3.208~~ 1.3.312 is modified by adding the words "or summary" and deleting the words "in full" in (2)(a)(i) so that it will read as follows: "(i) ~~either~~ the text of the rule adopted or amended, or reference to the notice of proposed agency action in which the text or summary of the proposed rule or rule as proposed to be amended was printed, ~~or reference to the page number of the Administrative Rules of Montana on which the repealed rule appears.~~"

(4) ARM 1.3.101 and 1.3.102 are procedural rules required by ~~MCA chapter implementing~~ Article II, Section 8 of the 1972 Constitution, right of participation. ARM 1.3.201, 1.3.202, 1.3.211 through 1.3.224, and 1.3.226 through 1.3.233 are organizational and procedural rules required by the Montana Administrative Procedure Act. Copies of the model rules may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

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

REASON: Effective October 1, 2007, House Bill 70 transferred to the Secretary of State some model rules previously assigned to the Attorney General. The rules transferred to the Secretary of State describe the organization of agencies and model rules of practice for agencies to use as a guide for the rulemaking process and in fulfilling the provisions of 2-4-201, MCA, which require agencies to adopt rules describing their organization and rules of practice. On July 31, 2008, and August 14, 2008, the Secretary of State and Attorney General, respectively, finalized rulemakings implementing House Bill 70. In making these rule changes, the Attorney General and Secretary of State revised their rules, adopted certain new rules, and repealed a rule, to conform the rules to the transfer of rules to the Secretary of State, define new terms, provide for use of online template forms, update the rules to conform to recent legislation and current rule drafting style, clarify the rules, reorganize the rules, and add certain statutory requirements to minimize the need for readers to rely on multiple sources in order to understand the administrative procedures. This rule is being amended to reflect that the Board of Environmental Review and the Department of Environmental Quality adopt those rules as amended, amended and transferred, and adopted, with the modification shown in (3).

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov, no later than [date]. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov, no later than [date].

6. If the board or department receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or

from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those [persons/organizations] directly affected has been determined to be [number] based on the [number of persons].

7. The board and department maintain a list of interested persons who wish to receive notices of rulemaking actions proposed by these entities. 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: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. 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 Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov, no later than [date], or may be made by completing a request form at any rules hearing held by the board or department.

8. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/
JOHN F. NORTH
Rule Reviewer

BY: /s/
JOSEPH W. RUSSELL, M.P.H.,
Chairman

DEPARTMENT OF ENVIRONMENTAL
QUALITY

BY: /s/
RICHARD H. OPPER, Director

Certified to the Secretary of State _____, 2009.