

BEFORE THE SECRETARY OF STATE  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT
ARM 44.3.2002, 44.3.2005,	)	
44.3.2011, 44.3.2015, 44.3.2102,	)	
44.3.2110, 44.3.2302, 44.3.2303, and	)	
44.3.2304 pertaining to Voter	)	
Registration Requirements,	)	
Provisional Registration, Late	)	
Registration Procedures, Voter	)	
Identification, and Related Definitions	)	

TO: All Concerned Persons

1. On October 8, 2021, the Secretary of State published MAR Notice No. 44-2-250 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1309 of the 2021 Montana Administrative Register, Issue Number 19.

2. On October 28, 2021, a public hearing was held on the proposed amendment of the above-stated rules.

3. The Secretary of State has amended the following rules as proposed: ARM 44.3.2002, 44.3.2005, 44.3.2011, 44.3.2102, 44.3.2110, 44.3.2302, 44.3.2303, and 44.3.2304.

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

44.3.2015 LATE REGISTRATION PROCEDURES (1) In addition to and consistent with the procedures specified in the Montana Code Annotated, and due to administrative necessity, the following shall apply to late registration:

(a) remains as proposed.

(b) After the close of late registration, an elector may:

(i) update ~~change~~ their residence to a different county within Montana but may only vote in their previous county of residence pursuant to 13-2-514, MCA.

(ii) update their residence to a different precinct within the county and may vote a ballot from the former precinct or new precinct. The elector may obtain the former precinct ballot at their former precinct or either ballot at a central location designated by the county election administrator. ~~change their residence to a different precinct within the county, and may vote in the new precinct, old precinct, or a central location designated by the county election administrator.~~

(iii) through (5) remain as proposed.

AUTH: 13-2-108, MCA

IMP: 13-2-304, 13-2-512, 13-2-514, MCA

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

COMMENT #1: A commenter said that the proposed amendment to ARM 44.3.2005 changes the way incomplete applications are treated (provisional versus pending/incomplete) which would require several changes to county election processes as well as voter registration system changes.

RESPONSE #1: The Secretary acknowledges that the proposal expands the use of "provisionally registered electors" to all applicants that do not complete all required fields on the voter registration application instead of only those that do not provide proper identification. Section 13-1-101(39), MCA defines "provisionally registered elector" as an individual whose application for voter registration was accepted but whose identity or eligibility has not yet been verified as provided by law. The proposed change properly aligns the rule with the statutory definition.

COMMENT #2: A commenter said that the proposed rules do not provide for the verification of U.S. citizenship for applicants or electors.

RESPONSE #2: The 2021 legislative enactments implemented by these proposed rule amendments (House Bill 176 and Senate Bill 169) do not address proof of citizenship, so these rule amendments do not address this issue. However, the existing voter registration process does require applicants to attest to their U.S. citizenship and Montana residency under the penalty of perjury. No other proof of citizenship is required under Montana statutes.

COMMENT #3: A commenter said the proposed rules do not provide for checks on an applicant's or elector's felony convictions or mental incapacity.

RESPONSE #3: The 2021 legislative enactments implemented by these proposed rule amendments (House Bill 176 and Senate Bill 169) do not address proof of mental capacity or felony convictions, so these rule amendments do not address those issues. However, Montana's Constitution only suspends a felon's voting franchise while the felon is serving a sentence in a penal institution. On release the felon's voting franchise is restored. Montana Constitution, Art. 4, Sec. 2.

COMMENT #4: A commenter said 13-2-512(1), MCA does not support allowing an elector, after the close of late registration, to change their precinct and vote in the new precinct as the proposed change to ARM 44.3.2015(1)(b)(ii) appears to allow.

RESPONSE #4: The precinct limits imposed by 13-2-512(1), MCA apply only to electors who have not notified the election administrator of their new address. The proposed changes to ARM 44.3.2015 simply allow for notification of such a change in addresses after the close of late registration for an otherwise properly registered elector and thereby allowing such an elector to vote a ballot from the new precinct.

Based on the comment, the Secretary acknowledges clarification is appropriate to avoid misinterpretation of the rule and has revised the amended rule accordingly. Also, 13-2-512, MCA has been added to the implementing statutes.

COMMENT #5: A commenter questioned whether the proposed rules limit the rights of inactive voters to reactivate their registrations under 13-2-222, MCA, or 52 USC 20507(d) and (e) of the National Voter Registration Act of 1993.

RESPONSE #5: The proposed rules are not in conflict with 13-2-222, MCA, or the National Voter Registration Act of 1993. The proposed rule would allow an elector certain action after the close of late registration. Proposed ARM 44.3.2015(1)(b)(i) and (ii) deal with updating addresses and where such an elector with a late updated address should cast their ballot. Section 13-2-222(1)(a), MCA only gives a general description of how an inactive elector can reactivate the registration, one example being "appears at a polling place in order to vote." As is proper for rules, ARM 44.3.2015(1)(b)(iv) provides clarification and allows the county election administrator discretion in designating locations for these electors to cast their ballot, which may also include polling places.

Certain provisions of the National Voter Registration Act of 1993 (52 USC 20507(e)) concern how and where a voter who has changed addresses may vote. While ARM 44.3.2015(1)(b)(i) through (iii) concern the same issues (the election day notice of a voter's change of address issue), they are consistent with 52 USC 20507(e). ARM 44.3.2015(1)(b)(iv) does not address late noticed changes of address, but the late reactivation of a voter's registration, which does not implicate the sections of the National Voter Registration Act cited by the commenter.

COMMENT #6: A commenter said the proposed amendments to ARM 44.3.2002(5)(b)(ii) allow student IDs to be used as voter identification but student IDs do not list address or residence, and the student could be from out of state.

RESPONSE #6: Under the proposed amendments to ARM 44.3.2002(5)(b)(ii), a student photo identification may only be used as a photo identification by an applicant if the applicant also provides a "current utility bill, bank statement, paycheck, government check, or other government document that shows the individual's name and current address." The U.S. citizenship, age, and residency requirements are statements affirmed by the applicant under penalty of perjury.

COMMENT #7: A commenter said there should be a 24-hour time limit on the election officials to make the changes to the statewide voter registration system contemplated in the proposed amendments to ARM 44.3.2005(1) and (4)(c).

RESPONSE #7: At this time given the generally high competence and diligence demonstrated by county election officials in Montana, the Secretary does not see the need for a rule-based time limit for these minor ministerial acts.

COMMENT #8: A commenter said the proposed amendments to ARM 44.3.2011 should list valid sources for verification such as the Department of Motor Vehicles, U.S. Postal Service, etc.

RESPONSE #8: Inclusion of examples of verification sources in the rule amendments was considered by the Secretary, but given the wide range of possible sources, it was concluded that specific examples in the rules would be more limiting than helpful to county election officials who must use their judgement in such cases.

COMMENT #9: A commenter said under the proposed amendments to ARM 44.3.2015, electors wishing to change their name under which they vote should be required to provide proof of that name change through marriage license, divorce decree, or other court documents.

RESPONSE #9: The 2021 legislative enactments implemented by these proposed rule amendments (House Bill 176 and Senate Bill 169) do not require outside verification of name changes, so these rule amendments do not address this issue. However, information supplied on the voter registration application is affirmed by the applicant under penalty of perjury.

COMMENT #10: A commenter said the proposed amendments to ARM 44.3.2015(1)(b)(ii) should contain a definition of "central location."

RESPONSE #10: As the "central location" will vary county by county, it is doubtful a definition provided by the Secretary in these rule amendments would be helpful to the county election officials who know their counties and available resources best. In addition, the proposed rule is aligned with statute (13-2-512, MCA) that provides the election administrator the discretion to designate a central location.

COMMENT #11: A commenter asked whether the definition under the proposed amendment to ARM 44.3.2302(5)(c) allows the use of commercially issued photo identifications, such as Costco or Sam's Club cards to be used for absentee or mail-in ballot identifications.

RESPONSE #11: Yes, together with the other documentation required under the proposed rules.

COMMENT #12: A commenter stated that "election worker" needs a definition and should be limited to hired county personnel who is not affiliated with any partisan, non-partisan group nor privately funded staff.

RESPONSE #12: The 2021 legislative enactments implemented by these proposed rule amendments (House Bill 176 and Senate Bill 169) do not address qualifications of election workers, so these rule amendments do not address this issue. However, "election worker" is currently defined in ARM 44.3.2002(4).

COMMENT #13: A commenter stated that the Secretary of State could encourage election offices to do their utmost to facilitate voter registration access to Montana citizens by scheduling concurrent shifts, such as 7 am to 3 pm and 3 pm to 11 pm, a Sunday through Thursday shift and Tuesday through Saturday shift to compliment the current 8 am to 5 pm shifts.

RESPONSE #13: The Secretary supports voter registration access; however, each county is responsible for establishing hours of operation for the election offices to meet the needs of their residents. The Secretary does not have authority to impose required hours, and with the availability of the mail-in and other registration options, the Secretary does not find expanded county office hours to be vital to voter registration access.

COMMENT #14: A commenter objected to any and all changes and asked, "When discussing changes to something so very important, why do you not contact residents of Montana first?"

RESPONSE #14: All the proper and required public notifications as set by the legislature were provided for these proposed rule amendments. In addition to the required notifications, additional outreach regarding these important proposed rule amendments was done to encourage and solicit feedback.

The commenter may wish to consult <https://rules.mt.gov> where proposed rule amendments for the Secretary of State and all agencies are published in the Montana Administrative Register. In addition, the commenter may wish to visit the Secretary of State's website where all Secretary of State rulemaking notices are listed, and the commenter can sign up to be included on the interested person's list to be notified when Secretary of State administrative rule notices are published in the Montana Administrative Register.

COMMENT #15: A commenter believes voters should be required to appear in person when voting so identification can be certain.

RESPONSE #15: Absentee and mail-in voting in the allowed circumstances are provided under statute in Montana, and in those circumstances the rules regarding voter identification must be followed.

COMMENT #16: A commenter was concerned about valid IDs and indicated it is too easy to get fraudulent IDs.

RESPONSE #16: Validation of identification is completed by competent, well-trained county election officials and is a key part of the registration and voting process. The proposed rules implement the identification requirements established by the 2021 legislative enactments (Senate Bill 169).

COMMENT #17: Commenters offered various spelling, grammar, and style suggestions.

RESPONSE #17: No changes were required or made in response to these comments.

/s/ AUSTIN JAMES  
Austin James  
Rule Reviewer

/s/ ANGELA NUNN  
Angela Nunn  
Chief Deputy Secretary of State

Dated this 18th day of January, 2022.