

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PUBLIC HEARING ON
ARM 44.3.2002, 44.3.2005,)	PROPOSED AMENDMENT
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 28, 2021, at 10:00 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Office conference room, Room 260, State Capitol, 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 Secretary of State no later than 5:00 p.m., October 21, 2021, to advise us of the nature of the accommodation that you need. Please contact Ray Dagnall, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-9009; fax (406) 444-3976; TDD/Montana Relay Service (406) 444-9068; or e-mail RDagnall@mt.gov.

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

44.3.2002 DEFINITIONS As used in this subchapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) remains the same.

~~(2) "Driver's license number" means a number provided by the Montana motor vehicle division on either a Montana motor vehicle division driver's license or a Montana motor vehicle division identification card.~~

(3) through (5) remain the same but are renumbered (2) through (4).

~~(6)~~ (5) "Identification" for the purposes of registration means ~~any of the~~ following:

~~(a) current and valid photo identification including, but not limited to, a valid driver's license, a school district or postsecondary education photo identification, or a tribal photo identification with the individual's name; or~~ a Montana driver's license number, Montana state identification card number issued pursuant to 61-12-501, MCA, or the last four digits of the applicant's social security number;

(b) if unable to provide the items in (5)(a), the following alternative forms of

identification:

(i) military identification card, tribal photo identification card, United States passport, or Montana concealed carry permit; or

(b) (ii) a current utility bill, bank statement, paycheck, government check, or other government document that shows the individual's name and current address and photo identification that shows the individual's name. The photo identification may include a school district photo identification, postsecondary education photo identification, or any other identification that includes the name and photo of the individual.

~~(c) For the purposes of this subchapter, identification is presumed to be current and valid unless proved otherwise. A driver's license or identification card is presumed to be current and valid if it is issued by any motor vehicle agency, regardless of its status. Any other photo identification is sufficient if it includes the name and photo of the individual.~~

~~(7) (6) "Legally registered electors" include but are not limited to means an electors who were was properly registered prior to January 1, 2003, and or these one who registered on or after that date whose applications for voter registration were was accepted, processed, and verified as provided by law.~~

~~(8) "Notice by the most expedient method available" means notification that shall occur by any of the following, at the discretion of the election administrator:~~

- ~~(a) telephone;~~
- ~~(b) mail;~~
- ~~(c) facsimile machine;~~
- ~~(d) in person; or~~
- ~~(e) e-mail or other electronic means.~~

AUTH: 13-2-109, MCA
IMP: 13-2-110, MCA

REASON: On April 19, 2021, the Governor of Montana signed into law Senate Bill (SB) 169. SB 169 revises certain identification requirements for voter registration, voting, and provisional voting. The Office of the Secretary of State is proposing changes to ARM 44.3.2002 to reflect the changes in statute. The proposed rules incorporate the legislature's amendments to 13-2-110, MCA, in the definitions rule of ARM Title 44, subchapter 20, Voter Registration. Additional changes include a proposal to remove two unnecessary definitions – "Driver's license number" and "Notice by the most expedient method available" that define terms unused in the subchapter. Additionally, the proposed amendment changes "Legally registered electors" from plural to singular to reflect use of the term in this subchapter.

44.3.2005 VOTER REGISTRATION APPLICATION INFORMATION

REQUIREMENTS (1) An applicant for voter registration must provide all required information on the voter registration application, and county election officials shall enter the information from each completed voter registration application into the statewide voter registration system as provided in this chapter.

(2) An election official processing and entering the information from an application for voter registration into the statewide voter registration system shall:

(a) enter the Montana driver's license number, Montana state identification card number, or the last four digits of the social security number when provided by the applicant on the voter registration application into the voter registration system maintained by the election administrator in a field provided for the number; or

(b) if the applicant was unable to provide one of the numbers in (2)(a), select the description of the form of identification required in ARM 44.3.2002, provided by the applicant on the voter registration application, in the voter registration system maintained by the election administrator; and

(b) (c) with respect to confidential or private numbers or information protected from disclosure under ARM 44.3.1102(1)(e) and (3), ensure that the numbers or information provided pursuant to (2)(a) and (b) remains private and accessible only by authorized county or state election officials in the discharge of their official duties and, when applicable, by the authorized staff of the Office of the Secretary of State; and.

(c) (3) An election official shall utilize the applicant's Montana driver's license number, Montana state identification card number, or the last four digits of the applicant's social security number when provided in the voter registration application use the number as a unique identifier for voting purposes in addition to the voter registration number assigned to the elector.

(3) (4) An applicant for voter registration who does not complete all required fields on the application or does not provide the applicant's driver's license number, the last four digits of the applicant's social security number, or a form of identification, as defined required in ARM 44.3.2002, shall be registered as a provisionally registered elector, pending receipt and verification, at any time up to and including on election day, of one of the required numbers or, if the applicant has not been issued either number, receipt of a form of identification required.

(a) If a provisionally registered elector's incomplete application does not contain the current residential address or other geographic information from which the location of the provisionally registered elector's residence can be easily identified, the applicant shall be entered as "pending – incomplete" in the statewide voter registration system until the required information is provided.

(b) If a provisionally registered elector's incomplete application does contain the provisionally registered elector's current residential address, or it can be easily ascertained from the information provided on the incomplete application, an election official shall use best efforts to contact the provisionally registered elector and request the information or documentation missing from the voter registration application.

(c) Upon receipt and verification as required under ARM 44.3.2011 of the information or documentation missing from a provisionally registered elector's voter registration application, the election administrator shall complete the registration as provided in this subchapter and shall change the elector's status to active.

(4) If an applicant does not provide all required information and the election administrator is unable to obtain that information, except for the information in (2) on the form prescribed by the secretary of state, the applicant may be entered as "pending – incomplete" status in the statewide voter registration system until the required information is provided.

AUTH: 13-2-109, MCA
IMP: 13-2-110, 13-2-208, MCA

REASON: On April 19, 2021, the Governor of Montana signed into law Senate Bill (SB) 169. SB 169 revises certain identification requirements for voter registration, voting, and provisional voting. The Office of the Secretary of State is proposing changes to ARM 44.3.2005 to revise voter registration application processes and procedures to reflect the changes in statute. In addition, the proposed amendment clarifies the process for handling incomplete voter registration applications. Finally, the proposed amendments incorporate clerical changes to improve readability.

44.3.2011 PROVISIONAL REGISTRATION PENDING VERIFICATION

(1) All applicants for voter registration who apply under this subchapter shall be registered provisionally pending verification by an election administrator or their designee of the applicant's Montana driver's license number, Montana state identification card number, or, if the applicant does not have a driver's license number, the last four digits of the applicant's social security number. If the applicant is unable to provide a Montana does not have a driver's license number, Montana state identification card number, or the last four digits of the applicant's social security number, the applicant shall provide a form of identification required under 13-2-110, MCA, and shall be registered provisionally until the identification information provided by the applicant is which, if accepted, shall be sufficient for verification under these rules verified by an election administrator.

(2) Identification information is verified for registration if it is a Montana driver's license number, a Montana state identification card number, or the last four digits of a social security number validated through the statewide voter registration system. Other forms of identification allowed for voter registration in ARM 44.3.2002 are verified if an election administrator determines that the identification information identifies the applicant, satisfies the requirements of ARM 44.3.2002, and appears to be genuine and authentic.

(3) If an election administrator or their designee cannot verify the identification information submitted by an applicant, the election administrator shall notify the applicant as provided by ARM 44.3.2013(2).

AUTH: 13-2-109, MCA
IMP: 13-2-110, MCA

REASON: On April 19, 2021, the Governor of Montana signed into law Senate Bill (SB) 169. SB 169 revises certain identification requirements for voter registration, voting, and provisional voting. The Office of the Secretary of State is proposing changes to ARM 44.3.2011 to reflect the changes in statute and to clarify the identification verification process applicable to provisionally registered electors. The proposed rules clarify the identification process to verify an applicant with provisionally registered status pending verification of the applicant's identity pursuant to law. The proposal includes changes to improve rule readability. Lastly, (3) proposes a notification requirement.

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) Any prospective elector wishing to may register or change the existing elector's voter information after noon on the day before election day the close of regular registration and be eligible to vote in the election if the election administrator in the county where the elector resides receives and verifies the elector's voter registration information prior to noon the day before the election. may submit a voter registration application at the county election administrator's office, but the elector must appear at the county election office by 8 p.m. on election day in order to complete the late registration process and receive an absentee ballot.

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

(i) 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) 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) change their name and may vote under the elector's former name unless the registration was cancelled.

(iv) reactivate their registration pursuant to 13-2-222, MCA, but may only vote on election day at the county election administrator's office or a central location designated by the county election administrator.

(2) through (5) remain the same.

AUTH: 13-2-108, MCA

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

REASON: On April 19, 2021, the Governor of Montana signed into law House Bill (HB) 176. HB 176 provides for the closing of late voter registration at noon the day before the election. The Office of the Secretary of State is proposing changes to ARM 44.3.2015 to reflect the changes in statute and to clarify what changes an elector may make after the close of the late registration period. The amendment also proposes changes to improve clarity and readability of the rule.

44.3.2102 DEFINITIONS As used in this subchapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) remains the same.

(2) ~~"Driver's license number" means a number provided by the Montana motor vehicle division on either a Montana motor vehicle division driver's license or a Montana motor vehicle division identification card.~~

(3) through (5) remain the same but are renumbered (2) through (4).

(6) (5) "Identification" for the purposes of voting at the polling place, means any of the following:

(a) ~~a current photo identification showing an elector's name including, but not limited to, a valid driver's license, a school district or postsecondary education photo identification, or a tribal photo identification~~ Montana driver's license, Montana state identification card issued pursuant to 61-12-501, MCA, military identification card,

tribal photo identification card, United States passport, or Montana concealed carry permit; or

(b) a current utility bill, bank statement, paycheck, ~~notice of confirmation of voter registration issued pursuant to 13-2-207, MCA,~~ government check, or other government document that shows the elector's name and current address; and

(c) photo identification that shows the elector's name, including but not limited to a school district or postsecondary education photo identification. ~~For the purposes of this subchapter, identification is presumed to be current and valid unless proved otherwise. A driver's license or identification card is presumed to be current and valid if it is issued by any motor vehicle agency, regardless of its status. Any other photo identification is sufficient if it includes the name and photo of the individual.~~

~~(7) (6) "Legally registered electors" include but are not limited to means an electors who were was properly registered prior to January 1, 2003, and or those one who registered on or after that date whose applications for voter registration were was accepted, processed, and verified as provided by law.~~

~~(8) "Notice by the most expedient method available" means notification that shall occur by any of the following, at the discretion of the election administrator:~~

~~(a) telephone;~~

~~(b) mail;~~

~~(c) facsimile machine;~~

~~(d) in person; or~~

~~(e) e-mail or other electronic means.~~

~~(9) (7) "Polling place elector identification form" means a form prescribed by the Secretary of State and printed by the election administrator that:~~

~~(a) requires an elector to provide the elector's current Montana residential address, current mailing address, date of birth, signature, and date;~~

~~(b) requires an elector to provide the elector's Montana driver's license number, or Montana state identification card number, or the last four digits of the elector's social security number; and~~

~~(c) is permitted to be used by an elector at the polling place as a government document meeting the requirements of identification under (6), if the number provided under ~~(8)(7)(b)~~ is verified validated through the statewide voter registration system by an election official and the elector's information is consistent with the information provided pursuant to (7)(a).~~

~~(10) and (11) remain the same but are renumbered (8) and (9).~~

~~(10) "Reasonable impediment declaration form" means the form allowed by 13-15-107(4), MCA, and prescribed by the Secretary of State.~~

AUTH: 13-13-603, MCA

IMP: 13-13-114, 13-13-601, 13-15-107, MCA

REASON: On April 19, 2021, the Governor of Montana signed into law Senate Bill (SB) 169. SB 169 revises certain identification requirements for voter registration, voting, and provisional voting. The Office of the Secretary of State is proposing changes to ARM 44.3.2102 in order to ensure the definition of terms used in ARM Title 44, subchapter 21 reflect recent changes in statute. The Office of the Secretary

of State proposes a definition of "reasonable impediment declaration form" to clarify use in the subchapter. The amendment provides for the process and use of polling place elector identification forms in accordance with current law. Additional changes include a proposal to remove two unnecessary definitions – "Driver's license number" and "Notice by the most expedient method available" and a proposal to change "Legally registered electors" from plural to singular to match the way it is used in this subchapter.

44.3.2110 PROCEDURES AT THE POLLING PLACE FOR DETERMINING THE SUFFICIENCY OF IDENTIFICATION - PRIOR TO CASTING A BALLOT

- (1) remains the same.
- (2) An election official shall allow an elector whose name appears on the precinct register, but who does not provide a required form of identification, to do the following:
 - (a) return to the polling place with a required form of identification; or
 - (b) ~~complete cast a provisional ballot polling place elector identification form, as defined in ARM 44.3.2102.~~
- (3) and (4) remain the same.

AUTH: 13-13-603, MCA
IMP: 13-1-116, 13-13-114, MCA

REASON: The Office of the Secretary of State is proposing clerical changes to ARM 44.3.2110 to align with Title 13, MCA provisions.

44.3.2302 DEFINITIONS As used in this subchapter, unless the context clearly indicates otherwise, the following definitions apply:

- (1) remains the same.
- (2) ~~"Driver's license number" means a number provided by the Montana motor vehicle division on either a Montana motor vehicle division driver's license or a Montana motor vehicle division identification card.~~
- (3) through (5) remain the same but are renumbered (2) through (4).
- (~~6~~) (5) "Identification" for the purposes of voting by absentee and mail ballot means any of the following:
 - (a) the elector's Montana driver's license number, the elector's Montana state identification card number issued pursuant to 61-12-501, MCA, or the last four digits of the elector's social security number ~~a current photo identification showing the elector's name, including, but not limited to, a valid driver's license, a school district or postsecondary education photo identification, or a tribal photo identification;~~ or
 - (b) a readable copy of the elector's military identification card, tribal photo identification card, United States passport, Montana concealed carry permit, or a photo identification card issued to the elector by a Montana college or university; ~~or a current utility bill, bank statement, paycheck, government check, or other government document that shows the elector's name and current address.~~
 - (c) any other form of readable photo identification with the individual elector's name together with a copy of a current utility bill, bank statement, paycheck, notice of confirmation of voter registration issued pursuant to 13-2-207, MCA, government

check, or other government document that shows the elector's name and current address. For the purposes of this subchapter, identification is presumed to be current and valid unless proved otherwise. A driver's license or identification card is presumed to be current and valid if it is issued by any motor vehicle agency, regardless of its status. Any other photo identification is sufficient if it includes the name and photo of the individual.

(7) ~~(6)~~ "Legally registered electors" ~~include but are not limited to~~ means an electors who ~~were~~ was properly registered prior to January 1, 2003, and or those one who registered on or after that date whose applications for voter registration ~~were~~ was accepted, processed, and verified as provided by law.

(8) ~~"Notice by the most expedient method available"~~ means notification that shall occur by any of the following, at the discretion of the election administrator:

- ~~(a) telephone;~~
- ~~(b) mail;~~
- ~~(c) facsimile machine;~~
- ~~(d) in person; or~~
- ~~(e) e-mail or other electronic means.~~

AUTH: 13-13-603, MCA

IMP: 13-13-201, 13-13-214, 13-13-241, 13-13-602, 13-15-107, MCA

REASON: On April 19, 2021, the Governor of Montana signed into law Senate Bill (SB) 169. SB 169 revises certain identification requirements for voter registration, voting, and provisional voting. The Office of the Secretary of State is proposing changes to ARM 44.3.2302 to reflect the changes in statute. The proposed changes to ARM 44.3.2302 incorporate statutory changes to the definitions of terms used in ARM Title 44, subchapter 23, Voter Identification and Provisional Voting by Absentee and Mail Ballot. Additional changes include a proposal to remove two unnecessary definitions – "Driver's license number" and "Notice by the most expedient method available" and a proposal to change "Legally registered electors" from plural to singular to match the way it is used in this subchapter.

44.3.2303 ABSENTEE OR MAIL BALLOT ELECTOR IDENTIFICATION FORM (1) An election official or election worker shall enclose with the materials sent to each provisionally registered elector instructions in the form prescribed by the secretary of state notifying the elector of the requirement to provide one of the forms of required identification defined in ARM 44.3.2302~~(6)~~.

AUTH: 13-1-202, 13-13-603, MCA

IMP: 13-1-202, 13-13-201, 13-13-603, MCA

REASON: The Office of the Secretary of State is proposing a change to ARM 44.3.2303 to update a reference impacted by the proposed renumbering in ARM 44.3.2302.

44.3.2304 PROCEDURES FOR ABSENTEE AND MAIL BALLOT VOTING - DETERMINING THE SUFFICIENCY OF IDENTIFICATION OF PROVISIONALLY

REGISTERED ELECTORS (1) After completion of the signature verification procedures in 13-13-241 or 13-19-309, MCA, as applicable, the election administrator shall determine prior to an election whether a provisionally registered absentee or mail ballot elector has enclosed in the outer signature envelope, together with the voted ballot in the secrecy envelope, provided sufficient identification as defined in ARM 44.3.2302 or eligibility information to allow a the ballot to be counted.

(a) If the identification enclosed in the outer signature envelope or eligibility information is insufficient, an election official or election worker shall follow procedures described in 13-13-241, MCA, and these rules to allow a provisionally registered absentee or mail ballot elector who failed to provide proper identifying information in the outer signature envelope to verify eligibility to vote:

(i) a ballot cast by an elector whose eligibility or voter identification information is insufficient or whose name does not appear on the precinct register must be handled as a provisional ballot under 13-15-107, MCA;

(ii) an election official or election worker shall notify the absentee or mail ballot elector by mail or by the most expedient method available that the elector's identification or eligibility information was insufficient and that the elector's ballot will be treated as a provisional ballot until the elector provides sufficient identification information under ARM 44.3.2302 13-13-114, MCA;

(iii) if the elector is notified by mail, an election official or election worker shall provide a self-addressed signature envelope along with a description in the form prescribed by the secretary of state of the information identification necessary for the absentee or mail ballot elector to reclassify the provisional ballot as a regular ballot; and

(iv) to the extent applicable, an election official or election worker shall handle absentee and mail ballot elector provisional ballots in the same manner as specified under the procedures for provisional ballots cast at the polling place in ARM 44.3.2113, 44.3.2114, and 44.3.2115.

(b) Upon receipt of eligibility information or of one of the forms of required identification defined in ARM 44.3.2302, if the identification form provided is verified through a voter verification process or another form of identification provided in ARM 44.3.2302 is sufficient:

(i) an election official or election worker shall mark on the absentee or mail ballot signature envelope that sufficient eligibility information or identification was provided by the elector; and

(ii) the county election administrator or designee shall register the elector as a legally registered elector.

(c) An election official or election worker who receives identification information shall retain in a sealed package the copy of identification provided by the provisionally registered absentee or mail ballot elector. The sealed package containing the copy of identification may not be opened without a court order.

AUTH: 13-13-603, MCA

IMP: 13-13-114, 13-13-201, 13-13-241, MCA

REASON: On April 19, 2021, the Governor of Montana signed into law Senate Bill (SB) 169. SB 169 revises certain identification requirements for voter registration, voting, and provisional voting. The Office of the Secretary of State is proposing changes to ARM 44.3.2304 to reflect the changes in statute and remove references to "eligibility information" which the Office of the Secretary of State has deemed unnecessary as used in this rule. Lastly, the proposed amendments incorporate clerical changes to increase clarity and readability of the 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: Angela Nunn, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing angela.nunn@mt.gov, and must be received no later than 5:00 p.m., November 5, 2021.

5. Austin James, Secretary of State's Office, has been designated to preside over and conduct the hearing.

6. The Secretary of State 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 which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding administrative rules, corporations, elections, notaries, records, uniform commercial code, or combination thereof. A written request may be mailed or delivered to the Secretary of State's Office, Administrative Rules Services, 1301 E. 6th Avenue, P.O. Box 202801, Helena, MT 59620-2801, or emailed to the office at sosarm@mt.gov.

7. With regard to the requirements of 2-4-302(2)(d), MCA, the primary bill sponsors, Senator Cuffe and Representative Greef, were contacted by mail, email, and phone on May 26, 2021, and by email and phone (confirmed receipt) on September 20, 2021.

8. With regard to the requirements of 2-4-111, MCA, the Secretary of State has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ AUSTIN JAMES
Austin James
Rule Reviewer

/s/ CHRISTI JACOBSEN
Christi Jacobsen
Secretary of State

Dated this 28th day of September, 2021.