

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 44.3.2203, 44.3.2303, and)
44.3.2304 regarding absentee and mail)
ballot voting)

TO: All Concerned Persons

1. On May 18, 2006, the Secretary of State published MAR Notice No. 44-2-133 regarding the proposed amendment of the above-stated rules at page 1242 of the 2006 Montana Administrative Register, Issue Number 10.

2. The following rules are amended exactly as proposed: ARM 44.3.2203, 44.3.2303, and 44.3.2304.

3. The following comments were received and appear with the Secretary of State's responses:

COMMENT 1: The Montana Conservation Voters Education Fund (MCVEF) supported the election rule amendments, many of which are already in effect through statutes passed by the legislature. The MCVEF was disappointed with the delay in issuing the amendments, and wanted to ensure that election administrators, civic groups, and electors were well informed about the laws and rules so that all qualified voters had the opportunity to vote in the June 6, 2006, primary election under the current applicable statutes.

RESPONSE 1: The Secretary of State's office appreciates the comments of MCVEF, and made every effort to inform election administrators, civic groups, and electors about the laws and rules so that all qualified voters had the opportunity to vote in the June 6, 2006, primary election under the current applicable statutes.

COMMENT 2: The League of Women Voters (LWV) supports voting systems that are secure, accurate, recountable, and accessible. Increased testing before, on election day, and after elections can increase voters' confidence that systems are operating correctly to produce an accurate record of votes case. The LWV proposed an unannounced, random test of 5% of all DREs, their hybrids, and other voting systems, a minimum of one per county, during an election to validate the accuracy of voted paper ballots with the voting system results. The rationale for this is that the AutoMARK is a hybrid direct recording electronic (DRE) voting system, an iVotronic DRE machine adapted for the handicapped that uses only one optical scanner element, the optical scanner ballot. The machine, not the voter, marks the ballot. Thus testing on election day must be implemented per 13-17-212(3), MCA. Testing on election day of other voting systems is not prohibited by 13-17-211(1), MCA, but it directs the Secretary of State to specify voting procedures. These may include testing on election day. Because no one has attempted hacking of ES&S scanners,

it leaves open the question of whether they are vulnerable. The more election officials do to test, the more confident voters will be that their vote is counted accurately.

RESPONSE 2: The Secretary of State's office appreciates the comments of the LWV. The Secretary of State's office plans to propose testing procedures in upcoming rules, and will take these comments into account when we do so.

COMMENT 3: The Montana Advocacy Program (MAP) proposed the addition of rules on challenges and amendment of procedures at the polling place, to reflect changes in law.

RESPONSE 3: The Secretary of State's office supports the changes proposed by MAP. In order to allow the opportunity for comment on MAP's proposed new rule and proposed new amendments, they will be included in upcoming rule notices.

4. The amendments will be applied retroactively to the procedures for the June 6, 2006, primary.

/s/ Mark A. Simonich for
Brad Johnson
Secretary of State

/s/ Janice Frankino Doggett
Janice Frankino Doggett
Rule Reviewer
Secretary of State

Dated this 26th day of June 2006.