

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF AMENDMENT AND
ARM 44.3.105, 44.3.106, 44.3.1101,)	REPEAL
44.3.1403, 44.3.1701, 44.3.1704,)	
44.3.1706, 44.3.1707, 44.3.1710,)	
44.3.1713, 44.3.1717, 44.3.2002,)	
44.3.2005, 44.3.2012 through)	
44.3.2016, 44.3.2102, 44.3.2103,)	
44.3.2109 through 44.3.2111,)	
44.3.2113 through 44.3.2115,)	
44.3.2203, 44.3.2302 through)	
44.3.2304, 44.3.2401, 44.3.2402, and)	
44.3.2501, repeal of ARM 44.3.2601)	
and 44.9.313 pertaining to elections)	

TO: All Concerned Persons

1. On November 12, 2009, the Secretary of State published MAR Notice No. 44-2-151 pertaining to the proposed amendment and repeal of the above-stated rules at page 2126 of the 2009 Montana Administrative Register, Issue Number 21.

2. On May 13, 2010, the Secretary of State published an Amended Notice and Extension of Comment Period for MAR Notice No. 44-2-151 at page 1174 of the 2010 Montana Administrative Register, Issue Number 9.

3. The Secretary of State has amended ARM 44.3.105, 44.3.106, 44.3.1101, 44.3.1403, 44.3.1701, 44.3.1704, 44.3.1707, 44.3.1710, 44.3.1713, 44.3.1717, 44.3.2002, 44.3.2005, 44.3.2012 through 44.3.2016, 44.3.2102, 44.3.2103, 44.3.2109 through 44.3.2111, 44.3.2113 through 44.3.2115, 44.3.2203, 44.3.2302 through 44.3.2304, 44.3.2401, 44.3.2402, and 44.3.2501, and repealed ARM 44.3.2601 and 44.9.313 as proposed.

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:

44.3.1706 NOTIFICATION OF TO APPLICANT (1) through (3) remain as proposed.

AUTH: 13-17-107, MCA
IMP: 13-17-101, 13-17-103, MCA

5. The Secretary of State received the following e-mailed comments from David Niss on behalf of the State Administration and Veterans' Affairs Interim

Committee and has thoroughly considered the comments. The comments received and the Secretary of State's responses are as follows:

COMMENT #1: " Most of the issues I see in the notice and that I discussed with our new attorneys involve the following:

(1) statements of reasonable necessity, that I believe are insufficient because those statements only explain what a rule does. Look, for example, at the statement of reasonable necessity for 44.3.2115. Under 2-4-305(6)(b), a statement of what a rule does is not an adequate statement of reasonable necessity. Many of the statements of reasonable necessity in this notice fall into this category. As I mentioned in my brief telephone conversation on this subject, insufficient statements of reasonable necessity are problematic because they will require a new notice of adoption because of the language of 2-4-305(8)(b)."

RESPONSE #1: The Secretary of State published the Amended Notice and Extension of Comment Period referenced in paragraph 2 above to correct the deficiencies in citations of authority and/or implementation and to revise the statements of reasonable necessity at issue.

COMMENT #2: "(2) statements of reasonable necessity that do not address a part of the rule being amended. For example, look at the statement for the changes to 44.3.2113. The statement of reasonable necessity is written as if all of the changes to the rule are to change 'elector' to 'individual'. However, the changes to subsections (5)(c) and (e) are not those types of changes and the statement of reasonable necessity therefore doesn't apply to those subsections."

RESPONSE #2: The Secretary of State published the Amended Notice and Extension of Comment Period referenced in paragraph 2 above to revise the statements of reasonable necessity at issue.

COMMENT #3: "(3) incorrect citations to authorizing or implemented sections. For example, look at the authorizing and implemented citations for the amendments to 44.3.2303. If 13-13-603 is going to be used for the authorizing section for the rule, that section appears to limit the implemented sections, in the order listed in that section, to 13-13-114, Title 13, chapter 13, part 1, 13-13-241, and 13-15-107, MCA. It appears, therefore, that either the section cited for authority or cited as being implemented will have to change."

RESPONSE #3: The Secretary of State published the Amended Notice and Extension of Comment Period referenced in paragraph 2 above to correct the deficiencies in citations of authority and/or implementation.

COMMENT #4: "(4) also, and I don't want to this this [sic] too hard because I understand that what constitutes a change for the purposes of 'clarity' can differ from person to person, some of the amendments that are explained to be for purposes of

'clarity' are actual substantive changes. Please take a look at the changes to such rules as 44.3.1701(3), that are explained to be for purposes of clarity, and their accompanying statements of reasonable necessity, to see if the changes are substantive changes. If they are substantive changes, then the substance of the change needs to be explained."

RESPONSE #4: The Secretary of State published the Amended Notice and Extension of Comment Period referenced in paragraph 2 above to revise the statement of reasonable necessity at issue.

COMMENT #5: "(5) finally, there are several rules in which language is being added to the rule that would allow the secretary of state to 'prescribe' certain forms or requirements. Examples of these types of rules are 44.3.1701, 44.3.1717, 44.3.2013, and 44.3.2303. In writing these types of rule changes it should be kept in mind that there is no way for an agency to prescribe any requirement or adopt any policy having the effect of law unless the agency adopts a rule under MAPA. This requirement is found in the definition of a 'rule' in 2-4-102, MCA and in the case law in cases such as State v. Vainio, 2001 MT 220, 306 M 439, 35 P3d 948 (2001). I don't know if the Secretary of State has, in fact, adopted a rule or rules in which the desired information has been 'prescribed' but we'll certainly discuss that when we meet concerning this rulemaking notice."

RESPONSE #5: The Secretary of State published the Amended Notice and Extension of Comment Period referenced in paragraph 2 above to revise the statements of reasonable necessity at issue. In the revised statements of reasonable necessity, the Secretary of State referenced section 13-1-202, MCA, which gives the Secretary of State the statutory authority to "prescribe the design of any election form required by law" and/or section 13-1-202, MCA, which gives the Secretary of State the statutory authority to "prepare and deliver to the election administrators ... written directives and instructions relating to and based on the election laws."

/s/ JORGE QUINTANA
Jorge Quintana
Rule Reviewer

/s/ LINDA MCCULLOCH
Linda McCulloch
Secretary of State

Dated this 14th day of June, 2010.