

BEFORE THE SECRETARY OF STATE  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 44.3.105, 44.3.106, 44.3.1101,	)	AMENDMENT AND REPEAL
44.3.1403, 44.3.1701, 44.3.1704,	)	
44.3.1706, 44.3.1707, 44.3.1710,	)	NO PUBLIC HEARING
44.3.1713, 44.3.1717, 44.3.2002,	)	CONTEMPLATED
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 repeal of ARM	)	
44.3.2601 and 44.9.313 pertaining to	)	
elections	)	

TO: All Concerned Persons

1. On December 14, 2009, the Secretary of State proposes to amend and repeal 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. on November 27, 2009, to advise us of the nature of the accommodation that you need. Please contact Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana, 59620-2801; telephone (406) 444-5375; fax (406) 444-4249; TDD/Montana Relay Service (406) 444-9068; or e-mail jquintana@mt.gov.

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

44.3.105 SURVEY PROCEDURE TO DETERMINE ACCESSIBILITY

(1) Unless specified otherwise, the election administrator shall conduct an on-site survey in each polling place 45 days prior to utilizing that facility, ~~except those designated as "rural"~~, as provided in ARM 44.3.109, to determine whether such facilities are in compliance with the criteria set forth in these rules.

(2) through (7) remain the same.

AUTH: ~~13-3-202~~ 13-3-205, MCA

IMP: 13-3-206, ~~13-3-207~~, MCA

REASON: The amendment is reasonably necessary to reflect the statutory changes to section 13-3-207, MCA, by the 2007 Legislature which removed the "rural"

classification of polling places. The statutory authority and implementation citations were reviewed and updated.

44.3.106 EXEMPTION PROCEDURE (1) through (4) remain the same.

(5) The Secretary of State may grant an exemption pursuant to this subchapter if all potential polling places have been surveyed and ~~it is determined~~ the election administrator has certified that:

(a) remains the same.

(b) the location is designated inaccessible because it is a rural polling place and designation of an accessible facility as a polling place will require excessive travel or impose other hardships for the majority of qualified electors in the ~~precinct~~ polling place.

(6) remains the same.

(7) A polling place designated as "~~rural~~" 45 days prior to an election as inaccessible because it is rural shall be exempt from the on-site survey procedure provided in ARM 44.3.108.

(8) remains the same.

AUTH: 13-3-205, MCA

IMP: 13-3-207, 13-3-212, MCA

REASON: The amendments are reasonably necessary to reflect the statutory changes to section 13-3-207, MCA, by the 2007 Legislature which removed the "rural" classification of polling places. The statutory implementation citations were reviewed and updated.

44.3.1101 SCHEDULE OF FEES FOR THE CENTRALIZED VOTER FILE

(1) Upon written request, the Secretary of State through its vendor shall furnish, for noncommercial use to private individuals or entities, a list of registered electors as compiled and maintained in its statewide voter database. For the statewide list or available extracts from the statewide list the charge is \$1,000.00. For a legislative representative district list the charge is \$100.00, for a legislative senate district list the charge is \$150.00, and for a county list the charge is \$200.00, and for the petition signers report the charge is \$200. For a subscription for ongoing access to the database and all other available extracts or lists the charge is \$5,000.00 for one year.

AUTH: 2-15-404, MCA

IMP: ~~43-2-115(2)~~ 13-2-122, MCA

REASON: This amendment is reasonably necessary to set a charge for the petition signers report commensurate with the amount of time and effort it takes to extract it, which is consistent with the time and effort it takes to produce a county list. The statutory implementation citation was reviewed and updated.

44.3.1403 FACSIMILE REQUESTS FOR ABSENTEE BALLOTS (1) through (2)(a) remain the same.

(b) is legible and the same size as the original.

AUTH: ~~13-1-204~~ 13-1-202, MCA

IMP: 13-13-212, MCA

REASON: The amendment to (2)(b) is reasonably necessary to clarify that a facsimile copy may be usable even though it may not be the same size as the original. The statutory authority citation was reviewed and updated.

44.3.1701 EXAMINATION OF VOTING MACHINES AND DEVICES

(1) through (2)(f) remain the same.

(g) "Engineering change order" means a change to the voting system that does not affect the current federal certification, form, fit, or function of the voting system.

(g) through (l) remain the same, but are renumbered (h) through (m).

(3) Such examination shall be conducted by the office of Secretary of State, who may choose ~~up to~~ at least two Montana electors to assist with the examination.

(4) and (5) remain the same.

(6) Examination of voting machines and devices shall be made only upon application to the Secretary of State. Such application shall be in writing on the form prescribed by the Secretary of State and shall contain the information prescribed by the Secretary of State.

(7) remains the same.

AUTH: 13-17-103, 13-17-107(~~4~~), MCA

IMP: ~~13-17-104, 13-17-107~~ 13-17-101, 13-17-103, MCA

REASON: The addition of (2)(g) is reasonably necessary to provide a definition for an "engineering change order." The amendments to (3) and (6) are necessary for clarity and to specify that the form is prescribed by the Secretary of State. The statutory authority and implementation citations were reviewed and updated.

44.3.1704 CRITERIA OF EXAMINATION (1) remains the same.

(2) through (2)(g) remain the same.

(h) Engineering change orders considered to be *de minimis* changes to voting systems shall be reviewed and approved by the Secretary of State upon written application.

AUTH: 13-17-103, 13-17-107(~~4~~), MCA

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

REASON: The amendment is reasonably necessary to reflect that certain engineering change orders may be necessary. The statutory authority and implementation citations were reviewed and updated.

44.3.1706 NOTIFICATION OF APPLICANT (1) Within 30 days after completion of such examination, the Secretary of State or ~~his~~ the deputy or deputies

shall prepare and file in ~~his~~ the office a report of ~~his~~ the findings with respect to the system examined.

(2) A copy of such report shall be forwarded to the applicant at the address shown in ~~his~~ the application for such examination.

(3) remains the same.

AUTH: 13-17-107(~~4~~), MCA

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

REASON: The amendments are necessary to ensure that rule language is gender-neutral. The statutory authority and implementation citations were reviewed and updated.

44.3.1707 APPEAL FROM DISAPPROVAL (1) If upon examination any system shall have been disapproved by the Secretary of State under these rules, the applicant may appeal ~~therefrom~~ by requesting reconsideration of the system so disapproved, under the following conditions:

(a) through (3) remain the same.

AUTH: 13-17-107(~~4~~), MCA

IMP: 13-17-101, 13-17-103 ~~43-47-407~~, MCA

REASON: The amendment to (1) is a simple grammatical change to an existing rule. The statutory authority and implementation citations were reviewed and updated.

44.3.1710 EXTENSION OF PREVIOUS APPROVAL OF VOTING MACHINES OR DEVICES (1) Any system having been approved under rules previously promulgated by the ~~Board of Election Devices or approved by the~~ Secretary of State under prior citations of law shall continue to have approval under the application of these rules without reexamination. However, any contracts for purchase drawn after December 28, 1979, must contain the guarantees as provided in ARM 44.3.1703(3).

AUTH: 13-17-107(~~4~~), MCA

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

REASON: This amendment reflects the cessation of the Board of Election Devices and the reality that the rules in question were primarily promulgated by the Secretary of State. The statutory authority and implementation citations were reviewed and updated.

44.3.1713 UNIFORM PROCEDURES FOR USING VOTING SYSTEMS

(1) through (1)(e) remain the same.

(f) testing and certification of voting systems pursuant to 13-17-212, MCA, including a random test conducted by a county election administrator or designee of

5% of each type of voting systems, a minimum of one per county, on election day, to validate the accuracy of voted paper ballots with the voting system results.

AUTH: 13-17-211, MCA

IMP: 13-17-211, MCA

REASON: The amendment to (1)(f) is reasonably necessary to reflect an audit recommendation that each type of voting system be tested. It is unclear in the existing rule that each type of voting system must be tested.

44.3.1717 SEALING BALLOTS AND VOTING SYSTEMS (1) remains the same.

(2) All voting systems must be secured as provided in accordance with the procedures specified in the instruction manuals, user guides, and technical manuals provided by the manufacturer of the voting system, as well as the election judge handbook and testing and security procedures provided by the office of the Secretary of State, except in cases in which those materials conflict with state laws or rules, in which case the laws or rules shall apply. All such procedures must ensure to the greatest degree possible the security of the voting systems from intentional and unintentional misuse.

(3) remains the same.

AUTH: ~~13-16-417~~, 13-17-211, MCA

IMP: 13-16-417, 13-17-211, MCA

REASON: The amendment to (2) recognizes the Secretary of State's role in providing testing and security procedures, pursuant to the rulemaking authority in Title 13, chapter 17, MCA. The statutory authority citations were reviewed and updated.

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

(1) through (6) remain the same.

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

(7) remains the same, but is renumbered (8).

AUTH: 13-2-109, MCA

IMP: 13-2-110, MCA

REASON: The addition of the definition for "legally registered electors" is reasonably necessary to define a term used in other parts of current rules.

44.3.2005 VOTER REGISTRATION CARD INFORMATION REQUIREMENTS (1) and (2) remain the same.

(3) An applicant for voter registration who 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 required in ARM 44.3.2002(6), 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.

(4) remains the same.

AUTH: 13-2-109, MCA

IMP: 13-2-110, MCA

REASON: The amendment to (3) is to specify that an individual who does not possess a driver's license number or a social security number will need to provide another form of required identification.

44.3.2012 VERIFICATION OF VOTER REGISTRATION INFORMATION

(1) remains the same.

(2) Throughout the election process, an election administrator shall, as necessary, work in conjunction with the office of the Secretary of State, the Department of Justice's Motor Vehicle Division, the Social Security Administration and any additional agencies to ensure the verification of the accuracy of the information provided in ARM 44.3.2011.

AUTH: 13-2-109, MCA

IMP: 13-2-110, MCA

REASON: The amendment to (2) is to clarify that the Motor Vehicle Division is within the Department of Justice.

44.3.2013 NOTICE TO APPLICANT OF STATUS OF APPLICATION FOR VOTER REGISTRATION

(1) An election official shall confirm an elector's registration by a confirmation notice required under 13-2-207, MCA, which ~~includes at minimum the elector's name, address, and precinct number~~ is substantially in the form prescribed by the Secretary of State.

(2) remains the same.

AUTH: 13-2-109, MCA

IMP: 13-2-110, MCA

REASON: The amendment to (1) is necessary to strike language that is too specific and unnecessary because the language on the forms is prescribed by the Secretary of State and printed on the forms that the election administrators print from the Montana VOTES database.

44.3.2014 MAINTENANCE OF ACTIVE AND INACTIVE VOTER REGISTRATION LISTS FOR ELECTIONS (1) and (1)(a) remain the same.

(b) mail a nonforwardable, first-class, "~~return if undeliverable--address correction requested~~" notice to all registered electors of each jurisdiction using current U.S. Postal Service language to ensure the mailing if undeliverable is returned with a corrected address, if available, to confirm their addresses and provide the appropriate confirmation notice to those individuals who return the notices;

(c) remains the same.

(2) Any notices not returned or returned as undeliverable to the election administrator after using the procedures provided in (1) must be followed by an appropriate confirmation notice that is a forwardable, first-class, postage-paid, self-addressed, return notice. If the elector fails to respond within 30 days of the confirmation notice, the election administrator shall move the elector to the inactive list.

(3) through (6) remain the same.

AUTH: 13-2-108, MCA

IMP: 13-2-220, MCA

REASON: The amendment to (1)(b) is reasonably necessary to allow for variations in current postal language. The amendment to (2) is necessary to ensure that the elector requirements for the first confirmation notice are the same as the elector requirements for the second notice by stating that the elector's failure to respond twice leads to inactivation.

44.3.2015 LATE REGISTRATION PROCEDURES (1) remains the same.

(a) ~~Election administrators shall close late registration at noon on the day before election day.~~ Any elector wishing to register after noon on the day before election day may ~~do so by~~ submitting a voter registration application at the county election administrator's office, ~~the day before election day or on election day during polling hours, and appearing~~ but the elector must appear at the county election office on election day in order to ~~vote~~ complete the late registration process and receive an absentee ballot.

(2) through (4) remain the same.

(5) If a late transfer registration applicant who is registered in another county appears in the county election office in order to transfer the applicant's registration, an election official shall, if the county from which the applicant is transferring registration has already printed applicable precinct registers, but not yet printed supplemental registers:

(a) subject to 13-2-304(2), MCA, ~~register the applicant in the statewide voter database as a duplicate voter~~ move the voter's registration from the current county into the new county of registration; and

(b) issue the applicant a ~~provisional~~ regular ballot; and

~~(c) after the election, contact the county from which the applicant is transferring the applicant's registration in order to determine whether the applicant voted in the other county, and follow all other applicable requirements specified in laws and rules for provisional electors.~~

(6) If a late transfer registration applicant who is registered in another county appears in the county election office in order to transfer the applicant's registration, an election official shall, if the county from which the applicant is transferring registration has already printed supplemental registers:

(a) subject to 13-2-304(2), MCA, move the voter's registration from the current county into the new county of registration;

(b) issue the applicant a provisional ballot; and

(c) after the election, contact the county from which the applicant is transferring the applicant's registration in order to determine whether the applicant voted in the other county, and follow all other applicable requirements specified in laws and rules for provisional electors.

(7) To correct administrative error, an election official may register a late registration applicant in the statewide voter database as a duplicate voter:

(a) issue the applicant a provisional ballot; and

(b) after the election, contact the county from which the applicant is transferring the applicant's registration in order to determine whether the applicant voted in the other county, and follow all other applicable requirements specified in laws and rules for provisional electors.

AUTH: 13-2-108, MCA

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

REASON: These amendments are reasonably necessary to more accurately reflect the late registration process and the requirements of the statewide voter database.

44.3.2016 STATEWIDE VOTER REGISTRATION DATABASE (1) through (1)(b) remain the same.

(c) proper maintenance and use of lists for legally registered electors, and provisionally registered electors and late registrants;

(d) through (3) remain the same.

(4) An elector who was properly registered prior to January 1, 2003, must be considered a legally registered elector.

AUTH: 13-2-108, MCA

IMP: 13-2-108, MCA

REASON: The amendment to (1)(c) is reasonably necessary to provide procedures for handling late registrants. Section (4) is deleted to remove a potentially confusing definition which has now been included in ARM 44.3.2102.

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

(1) "Current address" means residence address, or mailing address, or the precinct number that is preprinted on the voter confirmation notice issued pursuant to 13-2-207, MCA. For the purposes of this subchapter, an address is presumed to be current unless proved otherwise.

(2) through (6) remain the same.



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

(7) remains the same, but is renumbered (8).

~~(8)~~(9) "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, ~~date of birth~~, and date;

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

(c) remains the same.

(9) remains the same, but is renumbered (10).

~~(a)~~(11) "Polling place manager" means an election official who ~~assists electors with voting procedures while they are inside the~~ is responsible for polling place procedures.

AUTH: 13-13-603, MCA

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

REASON: The amendment to (1) is reasonably necessary to remove the option that a precinct number can serve as address because that option was based on a now outdated voter registration confirmation card. The addition of a definition for "legally registered electors" is appropriately removed from ARM 44.3.2016 and placed in this definitions rule. Subsection (9)(b) is amended to remove a reference to situations in which verification is available, since the verification is now available. The amendments to (9)(a) and (11) are for clarity.

44.3.2103 PRINTING OF IDENTIFICATION AND PROVISIONAL VOTING MATERIALS (1) Election administrators shall provide materials for identification and provisional voting in sufficient numbers for each election. These materials shall include at least the following, in forms prescribed by the Secretary of State:

(a) through (f) remain the same.

(g) at the option of the election administrator, ~~educational~~ postings for inside or outside of the polling place ~~in the form suggested by the Secretary of State.~~

(2) Election ~~administrators~~ officials shall use regular ballots for provisional voting.

AUTH: 13-13-603, MCA

IMP: 13-13-112, 13-13-603, MCA

REASON: These amendments are reasonably necessary to allow for postings inside or outside the polling place, whether or not the form is suggested by the Secretary of State.

44.3.2109 PROCEDURES FOR CHALLENGES (1) through (3)(a) remain the same.

(b) after the close of regular registration or on election day, the election administrator or, on election day, the election judge shall allow the challenged elector to cast a provisional paper ballot, which must be handled as provided in 13-15-107, MCA.

(4) through (6) remain the same.

AUTH: 13-13-301, MCA

IMP: 13-13-301, MCA

REASON: The amendment to (3)(b) is necessary to specify that there is now a close of regular registration, whereas in the past the close of regular registration was the close of all registration. With the implementation of late registration, it is useful to include the word "regular" before the word registration when referring to the 30-day close of registration rather than to late registration.

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

(1) through (2)(b) remain the same.

(3) An elector who is otherwise eligible to vote and who provides a required form of identification shall be permitted to vote as follows:

(a) and (b) remain the same.

(c) consistent with 13-13-114(1)(c) and (d), MCA, if the identification provided differs from information in the precinct register, but an election judge determines that the information provided is sufficient to verify the voter's identity to vote pursuant to 13-2-512, MCA, the elector may sign the precinct register, complete a transfer form or new registration form to correct the elector's voter registration information, and vote. An election judge shall write "transfer form" or "registration form" in the register beside the name of any elector submitting a form.

(4) remains the same.

AUTH: 13-13-603, MCA

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

REASON: These amendments are reasonably necessary to clarify that the form of identification submitted by the elector may or may not actually be a required form of identification and that the election judge should write certain information in the register.

44.3.2111 PROCEDURES AT THE POLLING PLACE FOR DETERMINING ELIGIBILITY TO VOTE - PRIOR TO CASTING A BALLOT (1) An individual who provides sufficient identification specified in ARM 44.3.2110(2)(6), but whose name does not appear on the precinct register, shall be permitted to:

(a) provide information to an election official at the polling place to verify the individual's registration, subject to the following:

(i) an ~~elector~~ individual whose name is erroneously omitted from a precinct register or other election register may secure from the election administrator or designee a certificate of the error, stating the precinct in which the ~~elector~~ individual is entitled to vote, and present the certificate, ~~(which will entitle the elector individual to vote a regular ballot),~~ to an election judge;

(ii) the certificate shall be marked "voted" by the election judges and returned by them with the precinct register. The ~~elector individual should~~ shall sign the back of the precinct register or in a location specified by the ~~county~~ election administrator;

(iii) if the ~~elector individual~~ is for any reason unable to secure a certificate of error ~~from the election administrator,~~ the ~~elector individual~~ may vote by signing an oath that ~~his the individual's~~ name was erroneously omitted, if the ~~election administrator or designee can confirm such omission by telephone to the chief election judge of the precinct confirms such omission by contacting the election administrator or designee.~~ The oath shall be marked "voted" by the election judges and returned by them with the precinct register. The ~~elector individual should~~ shall sign the back of the precinct register or in a location specified by the county election administrator; ~~and or~~

(iv) if the election official is unable to verify the individual's eligibility while the ~~elector individual~~ is at the polling place, sign the precinct register and cast a provisional ballot.

(2) and (3) remain the same.

AUTH: 13-13-603, MCA

IMP: 13-13-114, MCA

REASON: The amendments are reasonably necessary to indicate that an individual undergoing the procedures listed may not necessarily be an elector, since the individual's registration as an elector is in question. The amendments also clarify that the chief election judge must contact the election administrator or designee.

44.3.2113 PROVISIONAL VOTING PROCEDURES AT THE POLLING PLACE - CASTING A BALLOT (1) The election administrator shall direct election officials in each precinct to mark, in a location specified by the election administrator in the records maintained by election officials, a notation for each ~~elector individual~~ who has chosen to cast a provisional ballot or set of provisional ballots, as applicable.

(2) Consistent with 13-13-601, MCA, an election official shall give to an ~~elector individual~~ who has ~~been permitted the option of casting~~ chosen to cast a provisional ballot the following, in the forms prescribed by the Secretary of State:

(a) ~~instructions for casting a provisional ballot~~ instructions, which must be filled out by an election official in the areas specified;

(b) through (d) remain the same.

(3) The ~~elector individual~~ shall, upon receipt of the forms in ~~(4)~~(2):

(a) read the ~~instructions for casting a provisional ballot~~ instructions;

(b) remains the same.

(c) allow an election official to review the provisional ballot outer envelope that has been filled out by the ~~elector individual~~.

(4) An election official, upon receiving the provisional ballot outer envelope from the ~~elector~~ individual, shall:

(a) ensure that the ~~elector~~ individual completed all required information on the provisional ballot outer envelope; and

(b) inform the ~~elector~~ individual that the ~~elector~~ individual may provide additional information at the ~~elector's~~ individual's option.

(5) After the ~~elector~~ individual and the election official complete the requirements in this rule, the election official shall allow the ~~elector~~ individual to:

(a) remains the same.

(b) ~~cast~~ vote the ballot;

(c) place the ballot in the provisional ballot secrecy envelope, and in a primary election, place the unvoted party ballot in an unvoted ballot envelope;

(d) remains the same.

(e) return the provisional ballot outer envelope to an election official, who shall place the provisional ballot outer envelope into an unverified provisional ballot container, and who shall in a primary election, place the unvoted party ballot into an unvoted ballot box or into the provisional ballot outer envelope. The location where the unvoted party ballot is placed must be consistent within a county and must be consistent with direction given by the election administrator.

(6) Consistent with 13-15-107, MCA, an election official shall handle a provisional ballot outer envelope which holds a ballot cast provisionally by an ~~elector~~ individual whose voter information is verified by the close of the polls on election day as follows:

(a) and (b) remain the same.

(c) remove the provisional ballot secrecy envelope, which must be opened by the ~~elector~~ individual to remove the provisional ballot, which must then be deposited with other ballots in a manner that allows for the secrecy of the ballot to the greatest extent possible, and counted as any other ballot;

(d) and (e) remain the same.

AUTH: 13-13-603, MCA

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

REASON: The amendments are reasonably necessary to indicate that an individual may not necessarily be an elector and to clarify the options for handling voted and unvoted ballots.

44.3.2114 PROVISIONAL VOTING PROCEDURES ON ELECTION DAY  
AFTER THE CLOSE OF POLLS - THE SIXTH DAY AFTER ELECTION DAY

(1) remains the same.

(2) All information regarding electors who have chosen to cast provisional ballots shall remain private at all times prior to and during the counting of provisional ballots and shall not be released prior to ~~and~~, during, or after the counting period without a court order.

(3) through (11) remain the same.

AUTH: 13-13-603, MCA

IMP: 13-15-107, 13-15-301, MCA

REASON: The amendments to (2) are reasonably necessary to clarify procedures regarding maintaining provisional voter secrecy.

44.3.2115 PROVISIONAL VOTING PROCEDURES - AFTER FINAL DETERMINATION WHETHER OR NOT TO COUNT PROVISIONAL BALLOTS

(1) Election officials, after making the final determination whether or not to count the ballot(s) of each elector who cast a provisional ballot(s) and separately recording the reason(s) why each ballot was cast as a provisional ballot and why each ballot was counted or not counted, shall:

(a) through (2) remain the same.

AUTH: 13-13-603, MCA

IMP: 13-15-107, MCA

REASON: The amendment to (1) is necessary to change existing rule survey requirements to record and report provisional voting information.

44.3.2203 FORM OF ABSENTEE BALLOT APPLICATION AND ABSENTEE BALLOT TRANSMISSION TO ELECTION ADMINISTRATOR (1) and (2) remain the same.

(3) Consistent with 13-13-213(1), MCA, and except as provided in 13-13-213(4), MCA, all absentee ballot application forms must be addressed to the appropriate election official. The elector may mail the application directly to the election administrator or, deliver the application in person to the election administrator, or transmit it by facsimile pursuant to ARM 44.3.1403. An agent designated pursuant to 13-1-116, MCA, or a third party, may collect the elector's application and forward it to the election administrator.

(4) and (5) remain the same.

(6) The election administrator shall mail ~~an~~ a forwardable address confirmation form, prescribed by the Secretary of State in January and July of each year to each elector who has requested an absentee ballot for subsequent elections. The address confirmation form mailed in January is for elections to be held between February 1 following the mailing through July of the same year, and the address confirmation form mailed in July is for elections to be held between August 1 following the mailing through January of the succeeding year. The form shall, in bold print, indicate that the elector may update the elector's mailing address using the form. The elector or elector's agent shall sign the form, indicate the address to which the absentee ballot should be sent, and return the form to the election administrator. If the form is not completed and returned, the election administrator shall remove the elector from the register of electors who have requested an absentee ballot for subsequent elections.

(7) In order for an elector to be sent an absentee ballot for an election under the procedures and during the period specified under (4) through (6), the elector shall return ~~the confirmation form specified under (6) shall be returned to the~~

election administrator within the time period specified for receipt of absentee ballot applications under 13-13-211, MCA.

(8) remains the same.

AUTH: ~~13-1-202, 13-13-212~~, MCA

IMP: 13-13-211, 13-13-212, 13-13-213, MCA

REASON: These amendments are reasonably necessary to specify the option to transmit an absentee ballot application by facsimile, reflect that the confirmation form is sent forwardable, and clarify the effect of the elector returning the confirmation form. The statutory authority citation was reviewed and updated.

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

(1) "Current address" means residence address, or mailing address, ~~or the precinct number that is preprinted on the voter confirmation notice issued pursuant to 13-2-207, MCA.~~ For the purposes of this subchapter, an address is presumed to be current unless proved otherwise.

(2) through (6) remain the same.

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

(8) remains the same.

AUTH: 13-13-603, MCA

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

REASON: The amendments are reasonably necessary to clarify the definitions of "current address" and "legally registered electors."

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: 13-13-603, MCA

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

REASON: The amendment is reasonably necessary to ensure that the instructions are in the form prescribed by the Secretary of State.

44.3.2304 PROCEDURES FOR ABSENTEE AND MAIL BALLOT VOTING - DETERMINING THE SUFFICIENCY OF IDENTIFICATION OF PROVISIONALLY REGISTERED ELECTORS (1) and (1)(a) remain the same.

(b) Upon receipt of one of the forms of required identification defined in ARM 44.3.2302(6), if the identification form is verified through a voter verification process or another form of identification provided in ARM 44.3.2302(6) is sufficient;

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

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

(c) remains the same.

~~(d) A legally registered elector includes but is not limited to an elector who was properly registered prior to January 1, 2003.~~

AUTH: 13-13-603, MCA

IMP: 13-13-114, 13-13-201, 13-13-241, ~~13-19-309~~, MCA

REASON: The addition of (1)(b)(ii) is reasonably necessary to clarify the process of registering an elector as legally registered. Subsection (1)(d) is deleted because it is confusing.

44.3.2401 BALLOT FORM AND UNIFORMITY (1) through (1)(e) remain the same.

~~(f) the order and arrangement of voting system ballots.~~

(2) through (6) remain the same.

AUTH: 13-12-202, MCA

IMP: 13-12-202, MCA

REASON: Subsection (1)(f) is amended to better reflect the language in 13-12-202, MCA, which states that the "secretary of state shall adopt statewide uniform rules that prescribe the ballot form for each type of ballot used in this state." Voting systems ballots are not the only type of ballots used in Montana.

44.3.2402 DETERMINING A VALID VOTE IN MANUALLY COUNTING AND RECOUNTING PAPER AND OPTICAL SCAN BALLOTS (1) remains the same.

(2) The following general rules shall apply in a count or recount of paper and optical-scan ballots:

(a) through (j) remain the same.

AUTH: 13-16-206, MCA

IMP: 13-10-211, 13-15-206, MCA

REASON: The amendment to (2) is simply grammatical.

44.3.2501 UNITED STATES ELECTORS (1) through (1)(b) remain the same.

(c) in receiving absentee ballots, United States electors must be given priority to receive ballots as soon as they are available, if possible before the ~~30-day~~ deadline for making them available;

(d) remains the same.

AUTH: ~~13-21-103~~ ~~13-21-104~~, MCA

IMP: 13-13-205, 13-21-201, MCA

REASON: The amendment to (1)(c) is reasonably necessary to remove the reference to a 30-day deadline since there is no longer a 30-day deadline.

4. The Secretary of State proposes to repeal the following rules:

44.3.2601 ADMINISTRATIVE COMPLAINT PROCEDURES is found on page 44-213 of the Administrative Rules of Montana.

AUTH: 13-1-202, MCA, Public Law 107-252

IMP: 13-1-202, MCA, Public Law 107-252

REASON: The repeal of ARM 44.3.2601 is proposed because it is not required by state law and a directive is in place that addresses the requirements of federal law.

44.9.313 RECORD OF QUESTIONED BALLOTS is found on page 44-293 of the Administrative Rules of Montana.

AUTH: 13-1-202, 13-19-104, MCA

IMP: 13-19-105, MCA

REASON: The Secretary of State is proposing the repeal of ARM 44.9.313 because it is not required by law and is replaced by provisional procedures already in existence. Questioned ballots are now provisional ballots.

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana, 59620-2801; telephone (406) 444-5375; fax (406) 444-4249; or e-mail [jquintana@mt.gov](mailto:jquintana@mt.gov), and must be received no later than 5:00 p.m., December 10, 2009.

6. If persons who are directly affected by the proposed actions 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 to Jorge Quintana at the above address no later than 5:00 p.m., December 10, 2009.

7. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons 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 directly affected has been determined to be 63,411 persons based on the number of registered voters in Montana.

8. 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 that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. 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 the contact person in 5 above or may be made by completing a request form at any rules hearing held by the Secretary of State.

9. An electronic copy of this Proposal Notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of this Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

/s/ Jorge Quintana  
JORGE QUINTANA  
Rule Reviewer

/s/ Linda McCulloch  
LINDA MCCULLOCH  
Secretary of State

Dated this 2nd day of November, 2009.