

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of)	AMENDED NOTICE AND
ARM 44.3.105, 44.3.106, 44.3.1101,)	EXTENSION OF COMMENT
44.3.1403, 44.3.1701, 44.3.1704,)	PERIOD ON PROPOSED
44.3.1706, 44.3.1707, 44.3.1710,)	AMENDMENT AND REPEAL
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. 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 May 27, 2010, 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) 461-5173; fax (406) 444-4249; TDD/Montana Relay Service (406) 444-9068; or e-mail jquintana@mt.gov.

3. The Secretary of State is extending the comment period because it has corrected some deficiencies in citations of authority and/or implementation for ARM 44.3.1101, 44.3.1701, 44.3.1717, 44.3.2013, 44.3.2115, and 44.3.2303 and revised the statements of reasonable necessity for the proposed amendments to ARM 44.3.1101, 44.3.1701, 44.3.1717, 44.3.2013, 44.3.2113, 44.3.2115, and 44.3.2303 pursuant to e-mailed comments received from David Niss on behalf of the State Administration and Veterans' Affairs Interim Committee. Sections 2-4-305(8)(b) and (c), MCA, require that an agency must use an amended proposal notice to correct any deficiencies in a statement of reasonable necessity. The Secretary of State is proposing other minor amendments to ARM 44.3.1101, 44.3.2102, and 44.3.2302.

4. The Secretary of State proposes that the following rules be further amended as follows, new matter underlined, deleted matter interlined:

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, or a county list the charge is \$200.00, and for the petition signers report the charge is \$200.00. 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, ~~13-2-122~~, MCA

IMP: 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 authority and implementation citations ~~was~~ were reviewed and updated.

44.3.1701 EXAMINATION OF VOTING MACHINES AND DEVICES

(1) through (7) remain as proposed.

AUTH: 13-1-202, 13-17-103, 13-17-107, MCA

IMP: 13-1-202, 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 amendment to (3) gives the Secretary of State the flexibility to utilize as many electors as deemed necessary for the examination and the amendment to (6) is necessary to specify that the form is prescribed by the Secretary of State. Section 13-1-202, MCA, gives the Secretary of State the statutory authority to "prescribe the design of any election form required by law." The statutory authority and implementation citations were reviewed and updated.

44.3.1717 SEALING BALLOTS AND VOTING SYSTEMS (1) through (3) remain as proposed.

AUTH: 13-1-202, 13-17-211, MCA

IMP: 13-1-202, 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. Section 13-1-202, MCA, 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." The statutory authority and implementation citations were reviewed and updated.

44.3.2013 NOTICE TO APPLICANT OF STATUS OF APPLICATION FOR VOTER REGISTRATION (1) and (2) remain as proposed.

AUTH: 13-1-202, 13-2-109, MCA

IMP: 13-1-202, 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. Section 13-1-202, MCA, gives the Secretary of State the statutory authority to "prescribe the design of any election form required by law." The statutory authority and implementation citations were reviewed and updated.

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. For the purposes of this subchapter, an address is presumed to be current unless proved otherwise.

(2) through (10) remain the same as proposed.

(11) "Polling place manager" means an election official who is responsible for polling place procedures.

AUTH: 13-13-603, MCA

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

44.3.2113 PROVISIONAL VOTING PROCEDURES AT THE POLLING PLACE - CASTING A BALLOT. (1) through (5)(a) remain as proposed.

(b) vote the ballot;

(5)(c) and (5)(d) remain as proposed.

(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) remains as proposed.

AUTH: 13-13-603, MCA

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

REASON: The amendments to (2), (3), (4) and (5) that substitute the word "individual" for "elector" are reasonably necessary to indicate that an individual may not necessarily be an elector. The amendments to (2), (2)(a), (3)(a) and (5)(b) are to clean up existing language. The amendments to (1), (5)(c) and (5)(e) are to clarify the options for handling voted and unvoted ballots and to conform the rule language to the existing business process utilized by the election administrators. The amendments recognize that the election administrators are responsible for the

administration of elections and allows them the discretion to ensure that provisional votes are handled in a consistent manner with as little delay as possible.

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

(1) through (2) remain as proposed.

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

IMP: 13-1-202, 13-15-107, MCA

REASON: The amendment to (1) is necessary to ~~change~~ conform to existing rule federal Help America Vote Act survey requirements to record and report and to ensure proper recordkeeping of provisional voting information. Section 13-1-202, MCA, 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." The statutory authority and implementation citations were 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. For the purposes of this subchapter, an address is presumed to be current unless proved otherwise.

(2) through (8) remain as proposed.

AUTH: 13-13-603, MCA

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

44.3.2303 ABSENTEE OR MAIL BALLOT ELECTOR IDENTIFICATION FORM (1) remains as proposed.

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

IMP: 13-1-202, 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. Section 13-1-202, MCA, gives the Secretary of State the statutory authority to "prescribe the design of any election form required by law." The statutory authority and implementation citations were reviewed and updated.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana, 59620-2801; telephone (406) 461-5173; fax (406) 444-4249; TDD/Montana Relay Service (406) 444-9068; or e-mail jquintana@mt.gov, and must be received no later than 5:00 p.m., June 11, 2010.

/s/ JORGE QUINTANA
Jorge Quintana
Rule Reviewer

/s/ LINDA MCCULLOCH
Linda McCulloch
Secretary of State

Dated this 3rd day of May, 2010.