

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PUBLIC HEARING ON
ARM 44.3.104, 44.3.2014, 44.3.2015,)	PROPOSED AMENDMENT
44.3.2109, 44.3.2113, 44.3.2114,)	
44.3.2401, 44.9.202, 44.9.301,)	
44.9.303, 44.9.305, 44.9.307,)	
44.9.312, 44.9.315, 44.9.402, and)	
44.9.404 pertaining to elections)	

TO: All Concerned Persons

1. On March 18, 2010, at 10:00 a.m., the Secretary of State will hold a public hearing in Room 206 of the Capitol Building, at 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. on March 11, 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 rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

44.3.104 GUIDELINES FOR POLLING PLACE ACCESSIBILITY (1) ~~To be designated as accessible to individuals with disabilities and elderly voters, the standards for a polling place approved pursuant to 13-3-205(1), MCA, prior to October 1, 2005, must be consistent with the standards for accessibility established by the American National Standards Institute and the Uniform Federal Accessibility Standards. Completed forms prescribed by the Secretary of State pursuant to ARM 44.2.102(1)(b) are the method by which an election administrator must demonstrate the compliance of each polling place with this section.~~

~~(2)~~ Polling places approved on or after October 1, 2005, must comply with the accessibility standards in the Americans With Disabilities Act of 1990, 42 U.S.C. 12101, et seq. Completed forms prescribed by the Secretary of State pursuant to ARM 44.2.102(1)(b) are the method by which an election administrator must demonstrate the compliance of each polling place with this subchapter.

AUTH: 13-1-202, 13-3-205, MCA
IMP: 13-1-202, 13-3-205, MCA

REASON: As a result of an interim legislative study, the 2009 Legislature passed House Bill 19, which updated, clarified, and cleaned up election law statutes. The foregoing rule amendment eliminates outdated standards for polling place accessibility and reflects the changes made to the election laws during the legislative session.

44.3.2014 MAINTENANCE OF ACTIVE AND INACTIVE VOTER REGISTRATION LISTS FOR ELECTIONS (1) through (6) remain the same.

(7) An elector's registration shall be reactivated pursuant to 13-2-222, MCA, or shall be canceled pursuant to 13-2-402, MCA.

AUTH: 13-2-108, MCA

IMP: 13-2-220, MCA

REASON: As a result of an interim legislative study, the 2009 Legislature passed House Bill 19, which updated, clarified, and cleaned up election law statutes. The foregoing rule amendment reflects the changes made to the election laws during the legislative session.

44.3.2015 LATE REGISTRATION PROCEDURES (1) remains the same.

(2) Except as provided in (3)(a), an elector who registers or changes the elector's voter information pursuant to this rule may vote in the election only if the elector ~~votes at~~ obtains the ballot from and returns it to the location designated by the county election administrator's office. For the purposes of this rule, ~~voting at returning the ballots to the location designated by~~ the county election administrator's office includes:

(a) immediately after registering under the procedures of this rule, receiving and casting an absentee ballot at the location designated by the county election administrator's office; and

(b) at any time after registering under the procedures of this rule, receiving in person from the election administrator and returning an absentee ballot directly to the location designated by the county election administrator's office, either in person or by mail, subject to applicable deadlines.

(3) through (5) remain the same.

AUTH: 13-2-108, MCA

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

REASON: As a result of an interim legislative study, the 2009 Legislature passed House Bill 19, which updated, clarified, and cleaned up election law statutes. The foregoing rule amendments reflect the changes made to the election laws during the legislative session.

44.3.2109 PROCEDURES FOR CHALLENGES (1) through (4) remain the same.

(a) If the challenge was not made in the presence of the elector being challenged, the election administrator or election judge shall notify the challenged

elector ~~as soon as possible~~ of who made the challenge and the grounds of the challenge and explain what information the elector may provide to respond to the challenge. The notification must be made:

(i) within five days of the filing of the challenge if the election is more than five days away; or

(ii) on or before election day if the election is less than five days away.

(b) The election administrator or, on election day, the election judge shall also provide to the challenged elector a copy of the challenger's affidavit and any supporting evidence provided. ~~If the challenge is made more than five days before an election, "as soon as possible", as used in this section, means no later than five days after the challenge.~~

(5) and (6) remain the same.

AUTH: 13-13-301, MCA

IMP: 13-13-301, MCA

REASON: As a result of an interim legislative study, the 2009 Legislature passed House Bill 19, which updated, clarified, and cleaned up election law statutes. The foregoing rule amendments reflect the statutory changes made to 13-13-301, MCA, during the legislative session.

44.3.2113 PROVISIONAL VOTING PROCEDURES AT THE POLLING PLACE - CASTING A BALLOT (1) through (5) remain the same.

(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 whose voter information is verified by the ~~close of the polls on~~ end of election day as follows:

(a) and (b) remain the same.

(c) ensure that the ballot is removed from the provisional ballot secrecy envelope, ~~which must be opened by the elector 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: As a result of an interim legislative study, the 2009 Legislature passed House Bill 19, which updated, clarified, and cleaned up election law statutes. The foregoing rule amendments are to clean up language in the rule.

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

(1) The election administrator shall direct election officials in each precinct, after the close of polls on election day, to tally the number of electors who have chosen to cast provisional ballots, but whose voter information is not verified by the

~~close of the polls on end of~~ election day, in a location specified by the election administrator in the records maintained by election officials.

(2) through (7)(a) remain the same.

(b) If the signatures do not match, and the elector or the elector's agent fails to provide sufficient valid identification information by the deadline, the ballot must be rejected and handled as provided in 13-15-108, MCA, and this section.

(8) Consistent with 13-15-107, MCA, ~~an election official shall handle a provisional ballot must be removed from its provisional outer envelope, which holds a ballot cast provisionally by an elector whose voter information is verified after the close of polls on election day as follows grouped with other ballots in a manner that allows for the secrecy of the ballot to the greatest extent possible, and counted as any other provisional ballot if the elector's voter information is:~~

~~(a) remove the provisional ballot outer envelope from the unverified provisional ballot container verified before 5:00 p.m. on the day after the election; or~~

~~(b) mark it to indicate the reason(s) why it was verified and removed; postmarked by 5:00 p.m. on the day after election day and received and verified by 3:00 p.m. on the sixth day after the election.~~

~~(c) remove the provisional ballot secrecy envelope, which must be opened to remove the provisional ballot, and which must then be grouped 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 under (9); and~~

~~(d) (9) After the process in (8) is completed, an election official shall mark the provisional ballot outer envelope with the reason(s) why it was verified and removed and place the provisional ballot outer envelope in the verified provisional ballot container.~~

~~(9) Election officials must not begin the count of provisional ballots, cast by electors whose voter information is received and verified after the close of polls on election day, until 3:00 p.m. on the sixth day following the election.~~

~~(10) Provisional ballots that are not resolved by the end of election day may not be counted until after 3:00 p.m. on the sixth day after the election.~~

(10) and (11) remain the same, but are renumbered (11) and (12).

AUTH: 13-13-603, MCA

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

REASON: As a result of an interim legislative study, the 2009 Legislature passed House Bill 19, which updated, clarified, and cleaned up election law statutes. The foregoing rule amendments add a voter's designated agent, clarify that identity and eligibility need to be verified, allow voters to verify signatures by mail or in person and to correct other minor issues by several different methods, require a ballot to be handled as a provisional ballot if issues are not resolved, and reflect the statutory changes made during the legislative session.

44.3.2401 BALLOT FORM AND UNIFORMITY (1) through (6) remain the same.

(a) Except as provided in (6)(c), ~~¶~~the election administrator shall ensure that ballots are available for voting at least:

(i) through (b) remain the same.

(c) A ballot ~~may not be provided to an elector for absentee voting sooner than 30 days before an election, except that an absentee ballot requested pursuant to Title 13, chapter 21, MCA, may~~ must be sent to the elector as soon as the ballot is printed or at least 45 days in advance of an election held in conjunction with a federal general election in compliance with 13-1-104(1), MCA; and

(d) remains the same.

AUTH: 13-12-202, MCA

IMP: 13-12-202, 13-13-205, MCA

REASON: As a result of an interim legislative study, the 2009 Legislature passed House Bill 19, which updated, clarified, and cleaned up election law statutes. The foregoing rule amendments reflect statutory changes made during the legislative session. The implementation statutes were reviewed and updated.

44.9.202 WRITTEN PLAN SPECIFICATIONS (1) The written plan for the conduct of an election or elections held on the same election day ~~shall at least~~ must include:

(a) through (l) remain the same.

(m) sample written instructions that will be sent to the electors. The instructions must include, but are not limited to:

(i) information on the estimated amount of postage required to return the ballot; and

(ii) the location of the places of deposit and the days and times when ballots may be returned to the places of deposit, if the information is known, or if the information on location and hours of places of deposit is not yet known, a section that will allow the information to be added before the instructions are mailed to electors.

AUTH: 13-19-105, MCA

IMP: 13-19-205, MCA

REASON: As a result of an interim legislative study, the 2009 Legislature passed House Bill 19, which updated, clarified, and cleaned up election law statutes. The foregoing rule amendments reflect the statutory changes made to 13-19-205, MCA, during the legislative session that require a written plan that addresses instructions to voters and postage needed for return of the ballot.

44.9.301 PROCEDURES FOR VOTING IN PERSON (1) In certain instances where the mail ballot election option is being used, ~~some~~ certain electors may vote in person at a designated location. These instances may include voting by:

(a) ~~voting by~~ an elector who will be absent from his place of residence during the conduct of the election;

(b) ~~voting by~~ nonregistered but otherwise qualified electors; ~~and~~

(c) ~~voting by~~ electors requesting a replacement ballot; and

- (d) reactivating electors or late registrants.
- (2) remains the same.

AUTH: 13-19-105, MCA
IMP: 13-19-303, 13-19-304, MCA

REASON: As a result of an interim legislative study, the 2009 Legislature passed House Bill 19, which updated, clarified, and cleaned up election law statutes. The foregoing rule amendments reflect the statutory changes made during the legislative session. Section 13-19-303, MCA, was amended to allow a mailed ballot to be provided as an absentee ballot if a voter reactivates registration and requests an absentee ballot.

44.9.303 VOTING BY NONREGISTERED ELIGIBLE ELECTORS

- (1) remains the same.
- (2) When such an individual appears in person ~~and demonstrates an eligibility to vote~~ or contacts the election administrator by mail, facsimile, or electronic means, and provides materials demonstrating that the individual possesses the qualifications required for voting as provided in 7-13-2212, 7-33-2106, 85-7-1710, and 85-8-305, MCA, or a similar section, he the individual must be allowed to vote, by following 13-19-304, MCA, and either:
 - (a) remains the same.
 - (b) completing and signing or providing the signature of the individual's agent designated pursuant to 13-1-116, MCA, for subsequent signature verification purposes, an absentee request as provided in Title 13, chapter 13, part 2, MCA.
- (3) remains the same.

AUTH: 13-19-105, MCA
IMP: 13-19-304, MCA

REASON: As a result of an interim legislative study, the 2009 Legislature passed House Bill 19, which updated, clarified, and cleaned up election law statutes. The foregoing rule amendments reflect the statutory changes made to 13-19-304, MCA, during the legislative session to allow a person who is not a registered voter, but who is eligible to vote in an election to provide proof without physically coming to the office by recognizing that the person may live out-of-state or out of the country. In addition, some amendments were made to make the language gender neutral.

44.9.305 REPLACEMENT BALLOTS (1) through (3) remain the same.

- (a) prior to mailing or providing in person the replacement ballot, check the register to verify that the elector is entitled to vote and has not at that point done so;
- (b) through (4) remain the same.

AUTH: 13-19-105, MCA
IMP: 13-19-305, MCA

REASON: As a result of an interim legislative study, the 2009 Legislature passed House Bill 19, which updated, clarified, and cleaned up election law statutes. The rule is amended to reflect the statutory changes made to 13-19-305, MCA, during the legislative session which clarified the handling of replacement ballots.

44.9.307 PLACES OF DEPOSIT (1) The Act provides that the election administrator may designate one or more places within the political subdivision in which the election is conducted as places of deposit where ballots may be returned by the elector or the elector's agent or designee.

(2) Whenever a place of deposit is designated, the election administrator shall also designate ~~a person~~ at least two election officials who are selected in the same manner as provided for the selection of election judges in 13-4-102, MCA, to be responsible for all mail ballot election procedures at that place of deposit. Such designated ~~person~~ election officials shall:

(a) through (d) remain the same.

(e) be personally available at such place of deposit ~~during a substantial portion of the hours that it is open for business~~ as specified in 13-19-307(2), MCA;

(f) through (3) remain the same.

AUTH: 13-19-105, MCA

IMP: 13-19-307, MCA

REASON: As a result of an interim legislative study, the 2009 Legislature passed House Bill 19, which updated, clarified, and cleaned up election law statutes. The foregoing rule amendments reflect the statutory changes made to 13-19-307, MCA, during the legislative session to require that places of deposit must be accessible, have accessible voting machines, and be staffed by at least two election officials.

44.9.312 SIGNATURE VERIFICATION PROCEDURES (1) through (1)(e) remain the same.

(f) ~~those for a~~ ballots not validated ~~shall be recorded by~~, the school district clerk (election administrator) shall designate it as a provisional ballot, give notice to the elector as provided in 13-19-313, MCA, and record the ballot as provided in ARM 44.9.313;

(g) through (4) remain the same.

AUTH: 13-19-105, MCA

IMP: 13-19-310, MCA

REASON: As a result of an interim legislative study, the 2009 Legislature passed House Bill 19, which updated, clarified, and cleaned up election law statutes. The foregoing rule amendments reflect the statutory changes made to 13-19-310, MCA, during the legislative session to make a questionable ballot a provisional ballot rather than having it presented to the canvassing board for a determination.

44.9.315 INACTIVE ELECTORS IN MAIL BALLOT ELECTIONS (1) Inactive electors are not provided with mail ballots unless they reactivate under the following procedures:

(a) ~~If an inactive elector requests a ballot, or mails in or brings in a voter registration card (or other document listing the elector's current residence address, including but not limited to a reactivation form) before the ballots are mailed, election officials must change the elector's status in the statewide voter registration database to "Active" and send the elector a ballot on the same date as all other mail ballots are mailed. At any time before noon on the day before election day, a ballot may be mailed or, upon request, provided in person at the location designated by the election administrator to an elector on the inactive list after the elector reactivates the elector's registration as provided in 13-2-222, MCA.~~

(b) ~~If an inactive elector requests a ballot, or mails in or brings in a voter registration card (or other document listing the elector's current residence address, including but not limited to a reactivation form) after the day on which the ballots were mailed, election officials must change the elector's status in the statewide voter registration database to "Active" and provide the elector with a ballot in person or by mail. An elector on the inactive list shall vote at the location designated by the election administrator on election day if the elector reactivates the elector's registration after noon on the day before election day.~~

(c) For an elector reactivating under (1)(a) or (1)(b), election officials must change the elector's status in the statewide voter registration database to "Active".

(e) (2) In neither (1)(a) or (b) is it is not necessary for an election official to require the a reactivating elector to fill out a replacement ballot form under 13-19-305, MCA, since the elector, by following 13-2-222, MCA, is activating the elector's registration and is therefore automatically eligible for a ballot.

AUTH: 13-19-105, MCA

IMP: 13-2-222, 13-13-211, MCA

REASON: As a result of an interim legislative study, the 2009 Legislature passed House Bill 19, which updated, clarified, and cleaned up election law statutes. The foregoing rule amendments reflect the statutory changes made to 13-2-222, MCA, during the legislative session to clarify that a person may reactivate registration by voting in a mail ballot election. The implementation statutes were reviewed and updated.

44.9.402 RETURN/VERIFICATION ENVELOPE (1) remains the same.

(2) The face of the envelope should have the address of the election administrator both as return address and, in larger type, as mailing address. The words "POSTMASTER: OFFICIAL BALLOT - DO NOT DELAY" and "RETURN SERVICE REQUESTED", ~~to ensure the nonforwardability of the mail ballots, wording that conforms to postal regulations to require the return, not forwarding of undelivered packets~~ should also appear.

(3) through (5) remain the same.

AUTH: 13-1-202, 13-19-105, MCA

IMP: 13-19-105, MCA

REASON: As a result of an interim legislative study, the 2009 Legislature passed House Bill 19, which updated, clarified, and cleaned up election law statutes. The foregoing rule amendment is to clean up existing rule language and clarify procedures under the Secretary of State's authority granted by 13-19-105, MCA. Postal regulation wording has changed and the amendment provides flexibility so that forms may be changed as postal regulations change.

44.9.404 INSTRUCTIONS TO VOTERS (1) Instructions, as approved by the Secretary of State pursuant to 13-19-205, MCA, shall be included with the ballot, the secrecy envelope, and the return verification envelope as part of the packet mailed to the voter. The instructions shall detail the mechanical process which must be followed in order to properly cast the ballot. The instructions shall also:

(a) through (c) remain the same.

(d) advise the voter that in order for his the voter's ballot to be counted, it must be received in the election administrator's office no later than 8:00 p.m. on the day of the election-, except as provided in 13-21-206, MCA; and

(e) include the information specified under ARM 44.9.202(1)(m).

AUTH: 13-19-105, MCA

IMP: 13-19-105, 13-19-205, MCA

REASON: As a result of an interim legislative study, the 2009 Legislature passed House Bill 19, which updated, clarified, and cleaned up election law statutes. The foregoing rule amendments reflect the statutory changes made to 13-19-105, MCA, during the legislative session to clarify that the Secretary of State has authority to establish procedures for mail ballot elections. The implementation statutes were reviewed and updated.

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: Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801; telephone (406) 461-5173; fax (406) 444-4240; or e-mail jquintana@mt.gov, and must be received no later than 5:00 p.m., March 25, 2010.

5. Jorge Quintana, Secretary of State's office, has been designated to preside over and conduct this 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 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 4 above or may be made by completing a request form at any rules hearing held by the Secretary of State.

7. 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 the 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.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by letter sent via U.S. Mail on October 28, 2009.

/s/ Jorge Quintana
JORGE QUINTANA
Rule Reviewer

/s/ Linda McCulloch
LINDA MCCULLOCH
Secretary of State

Dated this 16th day of February, 2010.