

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of New)	NOTICE OF ADOPTION,
Rule I, amendment of ARM)	AMENDMENT, AMENDMENT AND
44.3.1101, 44.3.2004, 44.3.2005,)	TRANSFER, AND TRANSFER
44.3.2014, 44.3.2015, 44.3.2110,)	
44.3.2111, 44.3.2114, 44.3.2203, and)	
44.3.2304, the amendment and)	
transfer of 44.3.1403, 44.3.1716, and)	
44.3.2016, and the transfer of)	
44.3.1715 pertaining to elections)	

TO: All Concerned Persons

1. On June 20, 2013, the Secretary of State published MAR Notice No. 44-2-181 pertaining to the public hearing on the proposed adoption, amendment, amendment and transfer, and transfer of the above-stated rules at page 1059 of the 2013 Montana Administrative Register, Issue Number 12.

2. The Secretary of State has amended, amended and transferred, and transferred the following rules as proposed: ARM 44.3.1101, 44.3.2004, 44.3.2005, 44.3.2014, 44.3.2015, 44.3.2110, 44.3.2111, 44.3.2114, 44.3.2203, 44.3.2304, 44.3.1403, 44.3.1716, 44.3.2016, and 44.3.1715.

3. The Secretary of State has adopted the following rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE I (44.3.2407) BALLOT FORM AND UNIFORMITY

(1) ~~Guidelines that prescribe the ballot form for each type of ballot used in this state are provided to each election administrator in the prescribed forms and election judge handbook, as applicable.~~ The secretary of state adopts and incorporates by reference the document entitled "Ballot Form and Uniformity Pursuant to 13-12-202 MCA Layout Instructions and Sample Ballots," which is available on the secretary of state's web site at the following link:
<http://sos.mt.gov/Elections/Officials/Forms/index.asp>, updated March 20, 2012.

(2) The document incorporated by reference is provided to each election administrator and contains guidelines that prescribe the ballot form for each type of ballot used in this state, giving guidelines as to font, spacing, and printed instructions, to conform to the requirements of 13-12-202, MCA.

AUTH: 13-1-202, 13-12-202, MCA

IMP: 13-1-202, 13-12-202, MCA

4. The Secretary of State received a comment on proposed New Rule I from K. Virginia "Ginger" Aldrich, Attorney for the Montana State Legislature. She

presented her comments to proposed New Rule I to the State Administration and Veterans' Affairs Committee at a meeting held on July 11, 2013, which resulted in a vote by the committee to object to the adoption of the new rule. Her comments and the Secretary of State's responses are as follows:

COMMENT #1: "New Rule I. The first rule adopts ballot guidelines by reference to 'prescribed forms' and the election judge handbook. The only instance MAPA seems to allow documents incorporated by reference is under 2-4-307, which allows a model code, federal agency rule, rule of another agency of Montana, or 'similar publication' to be adopted by reference. If the Secretary's office contends that they are 'similar publications,' 2-4-307 requires that the documents be in existence at the time of the proposed rulemaking, there be a citation to the material adopted by reference, a statement of where the omitted material may be obtained, and must be available to the public at the time of comment, and cannot be modified without a separate rule-making process. So, it appears that if the SoS considers this a 'similar publication' and wishes to adopt these guidelines, the rule needs some clarification. If the SoS does not consider them to be a 'similar publication,' then the text needs to go through the full rule-making process."

RESPONSE #1: The Secretary of State is adopting New Rule I to put in place a rule required by statute. See 13-12-202, MCA. The guidelines concerning ballot uniformity are contained in the prescribed election forms which are available on the Secretary of State's web site. The Secretary of State is authorized per 13-1-202, MCA, to prescribe forms and written directives and instructions in carrying out her responsibilities as the State's Chief Election Officer. Therefore, the Secretary of State believes the requirements of 2-4-307, MCA, do not apply because the prescribed forms and written directives and instructions are separately authorized by statute and fall under her legal authority to prescribe forms and provide direction and advice to the county election administrators. The Statement of Intent that accompanied Senate Bill 65 (Ch. 471, L. 1979) provided in part that "the (Secretary of State's) authority ... to issue written directions and instructions is intended to give legal standing to the type of directives and instructions the Secretary of State has issued in the past in regard to elections The main purpose of a directive or instruction should be to assist election administrators in their duties and assure uniform procedures are used in all counties whenever possible." However, the Secretary of State has revised the proposed rule to add a reference to where the prescribed forms and directives and instructions can be located on the Secretary of State's web site. The State Administration and Veterans' Affairs Committee voted to withdraw its objection to the proposed New Rule I at its meeting held on August 20, 2013, based on the Secretary of State's proposed amendments.

COMMENT #2: Ms. Aldrich's comments regarding the amendments to 44.3.2005 are as follows: "44.3.2005 The language in (4) is confusing because the 'pending—incomplete' status is not a status under the Code, but (3) appears to be dealing with Provisional voters. I would recommend combining (3) and (4) for clarity."

RESPONSE #2: The Secretary of State has elected not to combine (3) and (4) because (3) is referring to "provisionally *registered*" electors, not provisional voters, and (4) is referring to applicants who do not provide all required information, with the exception of the ID number. The reference to "pending - incomplete" is existing rule language which is not proposed to be amended in this rule notice.

COMMENT #3: Ms. Aldrich's comments regarding the amendment of ARM 44.3.2114 are as follows: "44.3.2114 The catchline may need to be updated. The statute now discusses the 6th day after the election, but it is no longer in the rule."

RESPONSE #3: The Secretary of State will retain the reference to "the sixth day" in the rule catchphrase. The reference to "the sixth day" is eliminated in the text of the rule because that rule text unnecessarily duplicated the statutory language of 13-15-107, MCA.

COMMENT #4: Ms. Aldrich's overall comments are as follows: "Overall Another notice from your office had very helpful explanations – this notice for 44-2-181 seemed to be conforming language with a few bills that passed during the session but it didn't list them in the reasonable necessity statements. It would be helpful to list these in the reasoning rather than broadly saying that the amendments are necessary to conform terminology to statutory language."

RESPONSE #4: This rule notice is both a general cleanup of election rules in that it is meant to address rules that were missed in a general cleanup of election rules in 2011 and 2012 combined with the amendments made to election law by the 2013 Legislature by House Bill 120, which was a general cleanup of election laws.

/s/ JORGE QUINTANA
Jorge Quintana
Rule Reviewer

/s/ LINDA MCCULLOCH
Linda McCulloch
Secretary of State

Dated the 26th day of August, 2013.