

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PUBLIC HEARING ON
ARM 44.3.2405, 44.3.2501, and)	PROPOSED AMENDMENT AND
44.3.2511, and repeal of ARM)	REPEAL
44.3.2502, 44.3.2503, 44.3.2504,)	
44.3.2505, 44.3.2506, 44.3.2507,)	
44.3.2508, 44.3.2509, and 44.3.2510)	
pertaining to the Montana Absent)	
Uniformed Services and Overseas)	
Voter Act)	

TO: All Concerned Persons

1. On July 11, 2013, at 9:30 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Conference Room, Room 260, State Capitol Building, Helena, Montana, to consider the proposed amendment and repeal 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 June 27, 2013, 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, MT 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:

44.3.2405 DETERMINING A VALID VOTE ON A FEDERAL WRITE-IN ABSENTEE BALLOT (1) A ~~United States elector~~ covered voter voting a federal write-in absentee ballot for a federal general election may designate a candidate by writing in the name of the candidate or by writing in the name of the political party for which the elector is voting. A written designation of the political party must be counted as a vote for the candidate of that party. A vote may not be voided for reasons of misspellings, abbreviations, or other minor variations of the candidate's name.

(2) Except as provided in (2)(a), a ~~United States elector~~ covered voter may vote in any election for a public office other than for a federal office by using the addendum provided in the federal write-in absentee ballot ~~and writing in the title of the office and the name of the candidate for whom the elector is voting.~~

(a) remains the same.

AUTH: ~~43-21-103~~ 13-21-104, MCA

IMP: ~~43-21-205~~, MCA Sec. 19, Ch. 139, L. 2013

REASON: The amendments are reasonably necessary to conform rule terminology to statutory changes made by the passage of Senate Bill 57 by the 2013 Montana Legislature. The authority and implementation statutes were reviewed and updated pursuant to the passage of Senate Bill 57 by the 2013 Montana Legislature.

~~44.3.2501 UNITED STATES ELECTORS COVERED VOTERS~~ (1) The following rules shall be followed, consistent with the Montana Absent Uniformed Services and Overseas Elector Voting Voter Act, Title 13, chapter 21, MCA, in regard to ~~United States electors~~ covered voters:

~~(a) an individual must notify the county election official that the individual is a United States elector in order to come under the provisions of the Montana Absent Uniformed Services and Overseas Elector Voting Act;~~

~~(b) (a)~~ pursuant to ~~43-21-201~~, MCA Section 17, Chapter 139, Laws of 2013, there is no limit on the earliest date that a ~~United States elector~~ covered voter may request an absentee ballot;

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

~~(d) (c)~~ in elections for which a voter information pamphlet is required, election administrators must notify ~~United States electors~~ covered voters that the voter information pamphlet is available online, which can be accomplished through either:

- (i) the absentee elector instructions; or
- (ii) remains the same.

AUTH: ~~43-21-103~~ 13-21-104, MCA

IMP: ~~43-13-205, 13-21-103, 13-21-201~~ 13-21-104, MCA, Sec. 17, Ch. 139, L. 2013

REASON: The amendments are reasonably necessary to conform rule terminology to statutory changes made by the passage of Senate Bill 57 by the 2013 Montana Legislature. The authority and implementation statutes were reviewed and updated pursuant to the passage of Senate Bill 57 by the 2013 Montana Legislature.

44.3.2511 ELECTRONIC TRANSMISSION OF VOTING MATERIALS

(1) County election administrators shall allow ~~United States electors~~ covered voters to receive and transmit election materials electronically, as long as the security of transmission and identity of each elector is confirmed and facilities are available to maintain the accuracy, integrity, and secrecy of the ballot process. The procedures in this subchapter shall be followed, wherever applicable, in regard to the receipt and transmission of election materials electronically:

(a) A county election administrator ~~desiring to offer electronic transmission of voting materials~~ must use a the secretary of state's electronic absentee system or the election administrator's own system that is secure from unauthorized access. ~~Access to the system must be limited by the following means: it has the technological ability to store the ballots that are sent and received by electronic~~

~~transmission, and ballots stored in such manner can only be accessed by the election administrator or specially appointed deputies.~~

(b) Upon request for electronic transmission of a ballot, an election administrator who has received a valid application from a ~~United States elector covered voter~~ shall, subject to (1), send by electronic mail instructions on how to access the electronic absentee system established by the secretary of state, if the system is available for the election, or send by electronic transmission electronically a ballot, instructions to the elector, a transmittal cover sheet that includes an elector affirmation, and a notice that the elector's ballot will not be secret in that it will be received by the election administrator and the elector's votes will be transcribed to the original ballot, if applicable, by a panel of no less than two election judges officials. The original ~~instructions~~ affirmation and original ballot, as applicable, shall be retained together in a secure absentee envelope or container for that purpose.

(c) remains the same.

(d) If the ~~returned electronically transmitted~~ received ballot is acceptable, the election administrator shall log in the receipt of the ballot and place it in the secure absentee envelope with the original ballot, if applicable, and with the original affidavit until the ballots are ready to be transcribed.

(e) The receipt of electronically submitted ballots must be entered into the statewide voter registration system and a ballot shall be issued from the statewide voter registration system, if applicable, within three business days of receipt so that the covered voter may track the receipt of their ballot as required by federal law on the system designed for that purpose.

~~(e) (f)~~ On or before election day, the election administrator shall have the ~~electronically transmitted~~ returned ballots transcribed, as applicable, using the procedure prescribed ~~for assistance to voters with disabilities below~~.

~~(f) (g)~~ No less than two election judges officials shall participate in the transcription process to transfer the elector's vote from an ~~electronically transmitted~~ a received ballot, as applicable, to the standard ballot used in the precinct.

~~(g)~~ There may be noted next to the elector's name in the precinct register "Electronically Transmitted Ballot".

(h) remains the same.

(i) The election judges officials who transcribed the electronically transmitted ballot shall sign in the log next to the name of the elector.

(j) remains the same.

(2) Nothing in this rule shall prohibit a county election official from participating in any secure program for facilitating voting by ~~United States electors covered voters~~ which is sponsored by an agency of the federal government.

AUTH: 13-21-104, MCA

IMP: ~~43-21-207~~ 13-21-104, MCA

REASON: The amendments changing "United States elector(s)" to "covered voter(s)" are necessary to conform rule terminology to statutory changes made by the passage of Senate Bill 57 by the 2013 Montana Legislature. The amendment to (1)(a) is to specify that an election administrator must either use the Secretary of State's electronic system, or must use a system of their own. The amendments in

(1)(b), new (g), and (i) changing election "judges" to election "officials" is to clarify that it is most often election officials who will be authorized by the county election administrators to conduct these duties. Subsection (1)(b) is amended to specify that electronic transmission can be accomplished by sending the covered voter to a link to the electronic absentee system if the system is available for the election, or, if the electronic absentee system is not used in an election, to specify that a transmittal sheet must be included that includes an affirmation, and to specify that the materials can be secured in an envelope or a container if the county uses another method of storage. Subsection (1)(d) is amended to clarify that it is a returned ballot since electronically transmitted ballots can be returned via regular mail, electronic mail, or facsimile and to recognize that there may not always be an original ballot and to specify that the affirmation sheet must be retained with the returned ballot. Subsection (1)(e) is added to specify that received ballots must be transcribed if applicable according to subsections (1)(f) through (i). Subsection (1)(f) is amended to clarify that a returned ballot may need to be transcribed whether it is returned electronically or not. Former subsection (1)(g) is stricken to remove the reference to writing in the precinct register since the Statewide Voter Registration System will note that the individual voted absentee and the log shows that they voted electronically. The implementation statute was reviewed and updated pursuant to the passage of Senate Bill 57 by the 2013 Montana Legislature.

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

44.3.2502 FACSIMILE MACHINE ACCESS

AUTH: 13-21-104, MCA
IMP: 13-21-207, MCA

44.3.2503 HANDLING OF FACSIMILE BALLOTS

AUTH: 13-21-104, MCA
IMP: 13-21-207, MCA

44.3.2504 BALLOT TRANSMISSION

AUTH: 13-21-104, MCA
IMP: 13-21-207, MCA

44.3.2505 RECEIVING BALLOTS

AUTH: 13-21-104, MCA
IMP: 13-21-207, MCA

44.3.2506 BALLOT LOG

AUTH: 13-21-104, MCA
IMP: 13-21-104, MCA

44.3.2507 ELECTOR AFFIRMATION

AUTH: 13-21-104, MCA
IMP: 13-21-104, MCA

44.3.2508 BALLOT ACCEPTANCE

AUTH: 13-21-104, MCA
IMP: 13-21-104, MCA

44.3.2509 TRANSCRIPTION OF BALLOTS

AUTH: 13-21-104, MCA
IMP: 13-21-104, MCA

44.3.2510 ELECTION JUDGES AND BALLOT SECRECY

AUTH: 13-21-104, MCA
IMP: 13-21-104, MCA

REASON: These rules are being repealed because they are no longer necessary because the information has been added to ARM 44.3.2511.

5. These rule amendments and rule repeals are effective January 1, 2014, to coincide with the effective date of Chapter 139, Laws of 2013.

6. 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) 444-4249; or e-mail jquintana@mt.gov, and must be received no later than 5:00 p.m., July 19, 2013.

7. Jorge Quintana, Secretary of State's Office, has been designated to preside over and conduct this hearing.

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 6 above or may be made by completing a request form at any rules hearing held by the department.

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 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.

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 10th day of June, 2013.