

Sub-Chapter 20

Voter Registration

44.3.2001 VOTER REGISTRATION VERIFICATION (1) Consistent with 13-2-109, 13-2-110, 13-2-205, and 13-2-207, MCA, the rules in this subchapter shall be used to determine whether information provided is sufficient to be accepted and processed, for verifying accuracy, establishing procedures for provisional and legal registration and effect on ID requirements, and notifying electors of their status. (History: Sec. 13-2-109, MCA; IMP, Sec. 13-2-109, MCA; NEW, 2004 MAR p. 93, Eff. 1/16/04.)

44.3.2002 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) "Driver's license number" means a number provided by the Montana motor vehicle division on either a Montana motor vehicle division driver's license or a Montana motor vehicle division identification card.

(3) "Election official" means an election administrator, election deputy, or election judge.

(4) "Election worker" means an individual designated to perform election support duties.

(5) "Elector" means an individual qualified to vote under state law.

(6) "Identification" for the purposes of registration means any of the following:

(a) current and valid photo identification including, but not limited to, a valid driver's license, a school district or postsecondary education photo identification, or a tribal photo identification with the individual's name; or

(b) a current utility bill, bank statement, paycheck, government check, or other government document that shows the individual's name and current address.

(c) For the purposes of this subchapter, identification is presumed to be current and valid unless proved otherwise. A driver's license or identification card is presumed to be current and valid if it is issued by any motor vehicle agency, regardless of its status. Any other photo identification is sufficient if it includes the name and photo of the individual.

(7) "Notice by the most expedient method available" means notification that shall occur by any of the following, at the discretion of the election administrator:

- (a) telephone;
- (b) mail;
- (c) facsimile machine;
- (d) in person; or
- (e) email or other electronic means. (History: Sec. 13-2-109, MCA; IMP, Sec. 13-2-110, MCA; NEW, 2004 MAR p. 93, Eff. 1/16/04.)

44.3.2003 APPLICATION FOR VOTER REGISTRATION

(1) Applicants for voter registration may apply by the procedures specified in 13-2-110, MCA:

- (a) in person;
- (b) by mail; or
- (c) as may otherwise be provided by law. (History: Sec. 13-2-109, MCA; IMP, Sec. 13-2-110, MCA; NEW, 2004 MAR p. 93, Eff. 1/16/04.)

44.3.2004 VOTER REGISTRATION CARD

(1) Election administrators shall use the voter registration card substantially in the most updated form prescribed by the secretary of state.

(2) Only registration cards substantially in the form prescribed by the secretary of state after June 1, 2003, shall be used by election administrators.

(3) Election administrators may print registration cards for their county use as long as the cards are substantially in the most updated form prescribed by the secretary of state.

(4) If an applicant submits an outdated registration card that does not contain all of the required information, the election administrator may obtain that information and process the registration according to ARM 44.3.2005. (History: Sec. 13-2-109, MCA; IMP, Sec. 13-2-110, MCA; NEW, 2004 MAR p. 93, Eff. 1/16/04.)

44.3.2005 VOTER REGISTRATION CARD INFORMATION REQUIREMENTS

(1) An applicant for voter registration must provide all required information on the voter registration card.

(2) An election official shall:

- (a) enter the driver's license number, or the last four digits of the social security number provided by the applicant on the voter registration card into the voter registration database maintained by the election administrator in a field provided for the number;

(b) ensure that the number remains private and accessible only by authorized county election officials and, when applicable, by the authorized staff of the office of the secretary of state; and

(c) use the number as a unique identifier for voting purposes in addition to the voter registration number assigned to the elector.

(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 of one of the required numbers or receipt of a form of identification required.

(4) If an applicant does not provide all required information and the election administrator is unable to obtain that information, except for the information in (2) on the form prescribed by the secretary of state, the applicant shall not be registered. (History: Sec. 13-2-109, MCA; IMP, Sec. 13-2-110, MCA; NEW, 2004 MAR p. 93, Eff. 1/16/04.)

Rules 44.3.2006 through 44.3.2009 reserved

44.3.2010 APPLICANTS INELIGIBLE DUE TO AGE OR RESIDENCE REQUIREMENTS (1) An applicant for voter registration who is not eligible to register because of residence or age requirements, but who will be eligible on or before election day, may apply for voter registration pursuant to 13-2-110, MCA. An election official shall register the applicant as a provisionally registered elector.

(2) The election administrator shall change the status of a provisionally registered elector under this rule to the status of a legally registered elector at the time when the elector becomes eligible, without requiring any additional information from the elector. (History: Sec. 13-2-109, MCA; IMP, Sec. 13-2-110, and 13-2-205, MCA; NEW, 2004 MAR p. 93, Eff. 1/16/04.)

44.3.2011 PROVISIONAL REGISTRATION PENDING VERIFICATION

(1) All applicants for voter registration who apply under this subchapter shall be registered provisionally pending verification of the applicant's driver's license number or, if the applicant does not have a driver's license number, the last four digits of the applicant's social security number. If the applicant does not have a driver's license number or social security number, the applicant shall provide a form of identification required under 13-2-110, MCA, which, if accepted, shall be sufficient for verification under these rules. (History: Sec. 13-2-109, MCA; IMP, Sec. 13-2-110, MCA; NEW, 2004 MAR p. 93, Eff. 1/16/04.)

44.3.2012 VERIFICATION OF VOTER REGISTRATION INFORMATION

(1) If the information provided by an applicant for voter registration in ARM 44.3.2011 is verified and the applicant meets all other legal requirements for registration, an election official shall register the applicant as a legally registered elector.

(2) Throughout the election process, an election administrator shall, as necessary, work in conjunction with the office of the secretary of state, the 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. (History: Sec. 13-2-109, MCA; IMP, Sec. 13-2-110, MCA; NEW, 2004 MAR p. 93, Eff. 1/16/04.)

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.

(2) An election official shall provide notice by the most expedient method available to an applicant for voter registration whose voter registration is not confirmed. (History: Sec. 13-2-109, MCA; IMP, Sec. 13-2-110, MCA; NEW, 2004 MAR p. 93, Eff. 1/16/04.)

Sub-Chapter 21

Voter Identification and Provisional Voting
Procedures at the Polling Place

44.3.2101 VOTER IDENTIFICATION AND PROVISIONAL VOTING PROCEDURES AT THE POLLING PLACE - GENERAL (1) An election administrator shall follow 13-13-114, 13-13-301, 13-13-601, 13-15-107, MCA, and these rules in regard to voter identification and provisional voting at the polling place. (History: Sec. 13-13-603, MCA; IMP, Sec. 13-13-603, MCA; NEW, 2004 MAR p. 93, Eff. 1/16/04.)

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, 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) "Driver's license number" means a number provided by the Montana motor vehicle division on either a Montana motor vehicle division driver's license or a Montana motor vehicle division identification card.

(3) "Election official" means an election administrator, election deputy, or election judge.

(4) "Election worker" means an individual designated to perform election support duties.

(5) "Elector" means an individual qualified to vote under state law.

(6) "Identification" for the purposes of voting at the polling place, means any of the following:

(a) a current photo identification showing an elector's name including, but not limited to, a valid driver's license, a school district or postsecondary education photo identification, or a tribal photo identification; or

(b) a current utility bill, bank statement, paycheck, notice of confirmation of voter registration issued pursuant to 13-2-207, MCA, government check, or other government document that shows the elector's name and current address.

(c) For the purposes of this subchapter, identification is presumed to be current and valid unless proved otherwise. A driver's license or identification card is presumed to be current and valid if it is issued by any motor vehicle agency, regardless of its status. Any other photo identification is sufficient if it includes the name and photo of the individual.

(7) "Notice by the most expedient method available" means notification that shall occur by any of the following, at the discretion of the election administrator:

- (a) telephone;
- (b) mail;
- (c) facsimile machine;
- (d) in person; or
- (e) email or other electronic means.

(8) "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, 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) is permitted to be used by an elector at the polling place as a government document meeting the requirements of identification under (6), if the number provided under (8)(b) is verified.

(9) "Polling place greeter" means an election official or election worker who assists electors with voting procedures as they enter the polling place.

(a) "Polling place manager" means an election official who assists electors with voting procedures while they are inside the polling place. (History: Sec. 13-13-603, MCA; IMP, Sec. 13-13-114, 13-13-601, and 13-15-107, MCA; NEW, 2004 MAR p. 93, Eff. 1/16/04.)

44.3.2103 PRINTING OF IDENTIFICATION AND PROVISIONAL VOTING MATERIALS (1) Election administrators shall provide materials for 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) provisional ballot instructions;
- (b) provisional ballot outer envelopes;
- (c) provisional ballot secrecy envelopes (colored and/or hole-punched for ease of identification);
- (d) verified and unverified provisional ballot containers;
- (e) displays of instructions for electors under 13-13-112, MCA;

(f) polling place elector identification forms as defined in ARM 44.3.2102(8); and

(g) at the option of the election administrator, educational postings for outside of the polling place in the form suggested by the secretary of state.

(2) Election administrators shall use regular ballots for provisional voting. (History: Sec. 13-13-603, MCA; IMP, Sec. 13-13-112 and 13-13-603, MCA; NEW, 2004 MAR p. 93, Eff. 1/16/04.)

44.3.2104 ARRANGEMENTS FOR IDENTIFICATION AND PROVISIONAL VOTING PROCEDURES - BEFORE THE ELECTION (1) Election administrators shall arrange for a secure location for ballots cast provisionally, in the same or similar location as for voted regular ballots.

(2) Election administrators may at their option arrange for:

(a) polling place greeters who will inform electors of voting procedures;

(b) polling place managers to ensure ease of identification and provisional voting processes; and

(c) delivery and setup of educational materials to polling places for education of electors on voting procedures. (History: Sec. 13-13-603, MCA; IMP, Sec. 13-13-603, MCA; NEW, 2004 MAR p. 93, Eff. 1/16/04.)

Rules 44.3.2105 through 44.3.2109 reserved

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

(1) Consistent with 13-13-114, MCA, before an elector is permitted to receive a ballot or vote, the elector shall present to an election judge one of the forms of required identification defined in ARM 44.3.2102(6).

(2) An election official shall allow an elector whose name appears on the precinct register, but who does not provide a required form of identification, to do the following:

(a) return to the polling place with a required form of identification; or

(b) complete a polling place elector identification form, as defined in ARM 44.3.2102(8).

(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) if the information on the form of identification provided is determined to be sufficient by an election official while the elector is at the polling place, the elector shall be provided a regular ballot to vote;

(b) if the information on the form of identification provided is determined to be insufficient by an election official while the elector is at the polling place, the elector shall be provided a provisional ballot to vote; and

(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" beside the name of any elector submitting a form.

(4) Consistent with 13-13-114(3) and (4), MCA, if the elector is not able to sign the elector's name to the precinct register, a fingerprint or other identifying mark may be used. If the elector fails or refuses to sign the elector's name or, if unable to write, fails to provide a fingerprint or other identifying mark, the elector may cast a provisional ballot as provided in 13-13-601, MCA, and these rules. (History: Sec. 13-13-603, MCA; IMP, Sec. 13-13-114, MCA; NEW, 2004 MAR p. 93, Eff. 1/16/04.)

44.3.2111 PROCEDURES AT THE POLLING PLACE FOR DETERMINING ELIGIBILITY TO VOTE - PRIOR TO CASTING A BALLOT (1) An individual who provides identification specified in ARM 44.3.2110, 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; and

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

(2) Consistent with 13-13-114(1)(c) and (d), MCA, if the information provided by the elector differs from information in the precinct register, but an election judge determines that the information provided is sufficient to verify the voter's eligibility 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" beside the name of any elector submitting a form.

(3) Consistent with 13-13-114(3) and (4), MCA, if the elector is not able to sign the elector's name to the precinct register, a fingerprint or other identifying mark may be used. If the elector fails or refuses to sign the elector's name or, if unable to write, fails to provide a fingerprint or other identifying mark, the elector may cast a provisional ballot as provided in 13-13-601, MCA, and these rules. (History: Sec. 13-13-603, MCA; IMP, Sec. 13-13-114, MCA; NEW, 2004 MAR p. 93, Eff. 1/16/04.)

44.3.2112 PROCEDURES AT THE POLLING PLACE FOR CHALLENGES - PRIOR TO CASTING A BALLOT (1) Consistent with 13-13-301, MCA, an elector's right to vote may be challenged on election day by any registered elector by orally stating to the election judges the grounds of the challenge. An individual offering to vote may be orally challenged by any elector of the county upon the following grounds, stating that the individual:

- (a) is not registered as required by law;
- (b) is not 18 years of age or older;
- (c) has not been a resident of the state of Montana and of the county in which the individual offers to vote for at least 30 days;
- (d) is not a citizen of the United States;
- (e) is registered in another county or state;
- (f) is subject to a court order requiring the individual's voter registration to be cancelled;
- (g) is not the registered elector who the individual presenting to vote claims to be;
- (h) is a provisionally registered elector whose status has not been changed to status as a legally registered elector;
- (i) is of unsound mind, as determined by a court;
- (j) has voted before in that election;
- (k) has been convicted of a felony and is serving a sentence in a penal institution; or
- (l) does not have the right to vote due to failing to meet other requirements in the Montana constitution, statutes, or the administrative rules.

(2) An elector challenged under these rules may cast a provisional ballot, which must be handled as a provisional ballot under 13-15-107, MCA, and these rules. (History: Sec. 13-13-603, MCA; IMP, Sec. 13-13-301, MCA; NEW, 2004 MAR p. 93, Eff. 1/16/04.)

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 who has chosen to cast a provisional ballot.

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

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

- (b) a provisional ballot outer envelope, which must be filled out by an election official in the areas specified;
 - (c) a provisional ballot secrecy envelope; and
 - (d) a regular ballot.
- (3) The elector shall, upon receipt of the forms in (1):
- (a) read the instructions for casting a provisional ballot;
 - (b) fill out the specified areas of the provisional ballot outer envelope; and
 - (c) allow an election official to review the provisional ballot outer envelope that has been filled out by the elector.
- (4) An election official, upon receiving the provisional ballot outer envelope from the elector, shall:
- (a) ensure that the elector completed all required information on the provisional ballot outer envelope; and
 - (b) inform the elector that the elector may provide additional information at the elector's option.
- (5) After the elector and the election official complete the requirements in this rule, the election official shall allow the elector to:
- (a) sign the precinct register;
 - (b) cast the ballot;
 - (c) place the ballot in the provisional ballot secrecy envelope;
 - (d) place the provisional ballot secrecy envelope in the provisional ballot outer envelope; and
 - (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.
- (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 election day as follows:
- (a) remove the provisional ballot outer envelope from the unverified provisional ballot container;
 - (b) mark it to indicate the reason(s) why it was verified and removed;
 - (c) remove 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) place the provisional ballot outer envelope in the verified provisional ballot container; and

(e) mark in the location specified by the election administrator that the ballot has been counted as any other ballot. (History: Sec. 13-13-603, MCA; IMP, Sec. 13-13-114, 13-13-601, and 13-15-107, MCA; NEW, 2004 MAR p. 93, Eff. 1/16/04.)

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 election day, in a location specified by the election administrator in the records maintained by election officials.

(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 the counting period without a court order.

(3) Election officials shall seal the unverified and verified provisional ballot containers and ensure delivery according to the election administrator's instructions.

(4) The election administrator shall, until 5:00 p.m. on the day after election day, allow electors who cast provisional ballots to verify eligibility to vote, in person, or by sending by facsimile or electronic mail a copy or scanned document.

(5) The election administrator shall allow electors who cast provisional ballots to verify eligibility to vote, by mail postmarked on election day or the day after election day.

(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 after the close of polls on election day as follows:

(a) remove the provisional ballot outer envelope from the unverified provisional ballot container;

(b) mark it to indicate the reason(s) why it was verified and removed;

(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 (7); and

(d) place the provisional ballot outer envelope in the verified provisional ballot container.

(7) 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.

(8) Election officials must not count any provisional ballots cast by electors whose voter information is not verified by 3:00 p.m. on the sixth day following the election.

(9) After the completion of the count of provisional ballots, election officials must assure the secrecy of the ballots. An election administrator shall not release any information regarding any ballot, including provisionally cast ballots, if that information will result in any person being able to determine how an elector voted on any race or issue on the ballot. (History: Sec. 13-13-603, MCA; IMP, Sec. 13-15-107, MCA; NEW, 2004 MAR p. 93, Eff. 1/16/04.)

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 of each elector who cast a provisional ballot, shall:

(a) open the verified provisional ballot container, record on the provisional ballot outer envelope the reason(s) for counting the verified provisional ballots, and seal the verified provisional ballot container, which shall not be opened without a court order; and

(b) open the unverified provisional ballot container, and mark on each provisional ballot outer envelope that the elector's vote was not counted, and the reason why not, and all other applicable information, and seal the unverified provisional ballot container, which shall not be opened without a court order.

(2) Election officials or election workers shall notify each elector who cast a provisional ballot, by the most expedient means possible, whether or not the elector's vote was counted, and the reason(s) why or why not. (History: Sec. 13-13-603, MCA; IMP, Sec. 13-15-107, MCA; NEW, 2004 MAR p. 93, Eff. 1/16/04.)

Sub-Chapter 22

Form of Absentee Ballot Application and
Absentee Ballot Transmission to Election Administrator44.3.2201 FORM OF ABSENTEE BALLOT APPLICATION AND ABSENTEE
BALLOT TRANSMISSION TO ELECTION ADMINISTRATOR - GENERAL

(1) Election officials and election workers shall follow Title 13, chapter 13, part 2, MCA, and these rules in regard to absentee applications. (History: Sec. 13-13-212, MCA; IMP, Sec. 13-13-212, MCA; NEW, 2004 MAR p. 93, Eff. 1/16/04.)

44.3.2202 DEFINITIONS As used in this subchapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Election official" means an election administrator, election deputy, or election judge.

(2) "Election worker" means an individual designated to perform election support duties.

(3) "Elector" means an individual qualified to vote under state law. (History: Sec. 13-13-212, MCA; IMP, Sec. 13-13-212, MCA; NEW, 2004 MAR p. 93, Eff. 1/16/04.)

44.3.2203 FORM OF ABSENTEE BALLOT APPLICATION AND ABSENTEE
BALLOT TRANSMISSION TO ELECTION ADMINISTRATOR

(1) Consistent with 13-13-212, MCA, an elector may apply for an absentee ballot, using only a standardized form provided for in these rules, by making a written request, which must include the applicant's birth date and must be signed by the applicant. The request must be submitted to the election administrator of the applicant's county of residence within the time period specified in 13-13-211, MCA.

(2) The minimum acceptable prescribed form for an application for an absentee ballot must include a written request for the absentee ballot, the elector's birth date, and the elector's signature. Additional recommended statements include the election for which the elector is requesting an absentee ballot and the address to which the elector wants the ballot mailed. Electors are strongly encouraged to use the form used by election administrators, which appears in the forms booklet that is provided by the secretary of state to each election administrator.

(3) Consistent with 13-13-213(1), MCA, and except as provided in 13-13-213(3), MCA, the elector shall mail the application directly to the election administrator or deliver the application in person to the election administrator. With the exception of an immediate family member, as defined in 15-30-602, MCA, or a guardian, a third party may not collect applications for absentee ballots from electors and forward the applications to the election administrator. (History: Sec. 13-13-212, MCA; IMP, Sec. 13-13-211, 13-13-212, and 13-13-213, MCA; NEW, 2004 MAR p. 93, Eff. 1/16/04.)

Sub-Chapter 23

Voter Identification and Provisional Voting
by Absentee and Mail Ballot

44.3.2301 VOTER IDENTIFICATION AND PROVISIONAL VOTING BY ABSENTEE AND MAIL BALLOT - GENERAL (1) Election officials and election workers shall follow 13-13-201, 13-13-204, 13-13-241, 13-13-602, and 13-15-107, MCA, and these rules in regard to voter identification and provisional voting by absentee and mail ballot. (History: Sec. 13-13-603, MCA; IMP, Sec. 13-13-603, MCA; NEW, 2004 MAR p. 93, Eff. 1/16/04.)

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

(1) "Absentee or mail ballot elector identification form" means a form prescribed by the secretary of state and printed by the election administrator that:

(a) includes the elector's preprinted name and preprinted address;

(b) asks but does not require an elector to provide the elector's Montana driver's license number or Montana state identification number or the last four digits of the elector's social security number, and states that if the elector does not have any of the above, the elector may enclose in the outer return envelope a copy of the elector's photo identification showing the elector's name, including but not limited to a valid driver's license, a school district or postsecondary education photo identification, or a tribal photo identification, and that if the elector does not enclose a photo identification, the elector may enclose a copy of a current utility bill, bank statement, paycheck, notice of confirmation of voter registration, government check, or other government document that shows the elector's name and current address; and

(c) if sufficient, is permitted to be used by an absentee or mail ballot elector as a government document meeting the requirements of identification under (7).

(2) "Current address" means residence address, 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.

(3) "Driver's license number" means a number provided by the Montana motor vehicle division on either a Montana motor vehicle division driver's license or a Montana motor vehicle division identification card.

(4) "Election official" means an election administrator, election deputy, or election judge.

(5) "Election worker" means an individual designated to perform election support duties.

(6) "Elector" means an individual qualified to vote under state law.

(7) "Identification" for the purposes of voting by absentee and mail ballot means any of the following:

(a) a current photo identification showing the elector's name, including, but not limited to, a valid driver's license, a school district or postsecondary education photo identification, or a tribal photo identification; or

(b) a current utility bill, bank statement, paycheck, notice of confirmation of voter registration issued pursuant to 13-2-207, MCA, government check, or other government document that shows the elector's name and current address.

(c) For the purposes of this subchapter, identification is presumed to be current and valid unless proved otherwise. A driver's license or identification card is presumed to be current and valid if it is issued by any motor vehicle agency, regardless of its status. Any other photo identification is sufficient if it includes the name and photo of the individual.

(8) "Notice by the most expedient method available" means notification that shall occur by any of the following, at the discretion of the election administrator:

(a) telephone;

(b) mail;

(c) facsimile machine;

(d) in person; or

(e) email or other electronic means. (History: Sec. 13-13-603, MCA; IMP, Sec. 13-13-201, 13-13-214, 13-13-241, 13-13-602, and 13-15-107, MCA; NEW, 2004 MAR p. 93, Eff. 1/16/04.)

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 elector an absentee or mail ballot elector identification form defined under ARM 44.3.2302(1) and prescribed by the secretary of state. (History: Sec. 13-13-603, MCA; IMP, Sec. 13-13-603, MCA; NEW, 2004 MAR p. 93, Eff. 1/16/04.)

44.3.2304 PROCEDURES FOR ABSENTEE AND MAIL BALLOT VOTING - DETERMINING THE SUFFICIENCY OF IDENTIFICATION (1) After completion of the signature verification procedures in 13-13-241 or 13-19-309, MCA, as applicable, the election administrator shall determine prior to an election whether an absentee or mail ballot elector has provided sufficient identification defined in ARM 44.3.2302(7) to allow a ballot to be counted:

(a) if the identification is insufficient, an election official or election worker shall follow procedures described in 13-13-241, MCA, and these rules to allow an absentee or mail ballot elector who failed to provide proper identifying information in the outer return envelope to verify eligibility to vote:

(i) a ballot cast by an elector whose voter information is insufficient or whose name does not appear on the precinct register must be handled as a provisional ballot under 13-15-107, MCA;

(ii) an absentee or mail ballot elector whose ballot is determined to be provisional has until 5:00 p.m. on the day after the election to provide sufficient identification information either in person, by facsimile, by electronic mail, or by mail postmarked on the day of the election or the day after the election;

(iii) an election official or election worker shall notify the absentee or mail ballot elector by mail or by the most expedient method available that the elector's identification information was insufficient and that the elector's ballot will be treated as a provisional ballot until the elector provides sufficient information under 13-13-114, MCA;

(iv) if the elector is notified by mail, an election official or election worker shall provide a self-addressed return envelope along with a description in the form prescribed by the secretary of state of the information necessary for the absentee or mail ballot elector to reclassify the provisional ballot as a regular ballot; and

(v) to the extent applicable, an election official or election worker shall handle absentee and mail ballot elector provisional ballots in the same manner as specified under the procedures for provisional ballots cast at the polling place in ARM 44.3.2113, 44.3.2114 and 44.3.2115.

(b) Upon receipt of the absentee or mail ballot elector identification form, the election administrator shall accept as sufficient this properly completed form as one of the forms of required identification defined in ARM 44.3.2302(7).

(c) If the absentee or mail ballot elector identification form or other form of identification provided in ARM 44.3.2302(7) is sufficient, 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.

(d) An election official or election worker shall retain in a sealed package the copy of identification provided by the absentee or mail ballot elector. The sealed package containing the copy of identification may not be opened without a court order. (History: Sec. 13-13-603, MCA; IMP, Sec. 13-13-114, 13-13-241, and 13-19-309, MCA; NEW, 2004 MAR p. 93, Eff. 1/16/04.)

44.3.2305 PROCEDURES FOR ABSENTEE AND MAIL BALLOT VOTING - PRINTING ERROR OR BALLOT DESTROYED - FAILURE TO RECEIVE BALLOT

(1) Consistent with 13-13-204(2), MCA, if an elector does not receive an absentee ballot or if the absentee ballot was destroyed, the elector may appear at the appropriate polling place on election day and vote in person after signing an affidavit, in the form prescribed by the secretary of state, swearing that the elector's ballot has not been received or was destroyed, and must provide a form of identification defined in ARM 44.3.2302(7). The ballot must be handled as a provisional ballot under 13-15-107, MCA, and these rules, and will be counted unless the election administrator determines that the elector has already voted.

(2) An election administrator who determines that the identification provided by an elector under (1) is insufficient shall follow ARM 44.3.2304 to allow the elector to provide sufficient identification.

(3) An election administrator shall follow 13-19-305 and 13-19-313, MCA, in regard to replacement ballots, signature verification, and procedural mistakes for mail ballot voting, and shall require that the elector provide a form of identification defined in ARM 44.3.2302(7). The ballot must be handled as a provisional ballot under 13-15-107, MCA, and these rules, subject to a determination of whether the elector has already voted.

(4) An election administrator who determines that the identification provided by an elector under (3) is insufficient shall follow ARM 44.3.2304 to allow the elector to provide sufficient identification. (History: Sec. 13-13-603, MCA; IMP, Sec. 13-13-204, 13-13-603, 13-15-107, and 13-19-313, MCA; NEW, 2004 MAR p. 93, Eff. 1/16/04.)

Sub-Chapter 24

Ballot Form and Uniformity and Determining a Valid Vote

44.3.2401 BALLOT FORM AND UNIFORMITY (1) The following shall be prescribed by the secretary of state in the forms booklet that is provided to each election administrator:

(a) the manner in which each type of ballot may be corrected under 13-12-204, MCA;

(b) what provisions must be made on the ballot for write-in candidates;

(c) the size and content of stubs on paper ballots, except as provided in 13-19-106(1), MCA;

(d) how unvoted ballots must be handled;

(e) how the number of individuals voting and the number of ballots cast must be recorded; and

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

(2) The names of all candidates to appear on the ballots must be in the same font size and style.

(3) Notwithstanding 13-19-106(1), MCA, when the stubs are detached, it must be impossible to distinguish any one of the ballots from another ballot for the same office or issue.

(4) The ballots must contain the name of each candidate whose nomination is certified under law for an office and no other names, except that the names of candidates for president and vice president of the United States must appear on the ballot as provided in 13-25-101(2), MCA.

(5) Consistent with 13-14-212, MCA, provision must be made for a voter to indicate a "yes" or "no" vote in regard to retaining unopposed incumbent judicial officers. (History: Sec. 13-12-202, MCA; IMP, Sec. 13-12-202, MCA; NEW, 2004 MAR p. 93, Eff. 1/16/04.)

44.3.2402 DETERMINING A VALID VOTE IN MANUALLY COUNTING AND RECOUNTING PAPER AND OPTI-SCAN BALLOTS (1) The following general rules shall apply in a count or recount of paper and opti-scan ballots:

(a) two (or more) designated voting areas have been marked and one (or more) mark has been erased, but residue is left. The election official shall clarify the ballot and cause a vote to be counted for the designated voting area that has been marked;

(b) one designated voting area is marked and a second designated voting area is marked with a heavy mark and no erasure has been attempted. The election official shall cause this to be counted as an overvote;

(c) the designated voting area has been marked for one response and a partially completed mark is made in a designated voting area. The mark may or may not have some erasure although for the purpose of this rule erasure is not required. The election official shall cause this to be counted as an overvote;

(d) the designated voting area has been marked for one response and a hesitation mark is present within other designated voting area. The election official shall clarify the ballot and cause a vote to be counted for the designated voting area that has been marked;

(e) the designated voting area has not been marked according to instructions but the response is circled. The election official shall clarify the ballot by marking the designated voting area beside the circled vote if the marking of the designated voting area is consistent throughout the individual's ballot, and cause a vote to be counted for the marked designated voting area;

(f) the designated voting area has not been marked according to instructions but there is a connective line or arrow between the response and the designated voting area to indicate the vote. The election official shall clarify the ballot if the connective line or arrow beside the designated voting area is consistent throughout the individual's ballot, and cause a vote to be counted for the marked designated voting area;

(g) more than one designated voting area has been marked, but no clear mark is used to indicate the correct vote. The election official shall cause this to be counted as an overvote;

(h) more than one designated voting area has been marked, but a clear word, mark or statement is used to indicate the correct vote. The election official shall clarify the ballot and cause a vote to be counted for the designated voting area indicated as the correct vote;

(i) a word or statement has been used to indicate the correct vote instead of marking the designated voting area. The election official shall clarify the ballot and cause a vote to be counted for the designated voting area indicated as the correct vote;

(j) all of the designated voting areas are crossed out. The election official shall clarify the ballot and cause this to be counted as an undervote. (History: Sec. 13-15-206, MCA; IMP, Sec. 13-15-206, MCA; NEW, 2004 MAR p. 93, Eff. 1/16/04.)

44.3.2403 DETERMINING A VALID WRITE-IN VOTE IN MANUALLY COUNTING AND RECOUNTING PAPER AND OPTI-SCAN BALLOTS (1) Only votes for declared write-in candidates shall be counted. Except as provided in ARM 44.3.2405, a write-in vote may be counted only if the write-in vote identifies an individual by any of the designations filed pursuant to 13-10-211(1)(a), MCA. The following rules shall apply to determining a valid write-in vote in a count or recount of paper and opti-scan ballots:

(a) no candidate name or office written in, but the designated write-in voting area is marked and no other candidate is selected. The election official shall count this as an undervote;

(b) a printed candidate is selected by marking of the designated voting area, and no name is written in, but the designated write-in voting area is marked. The election official shall count this as a vote for the printed candidate;

(c) a printed candidate is selected by marking of the designated voting area, any name is written in and the designated write-in voting area is marked. If the name written in is different from the name of the printed candidate selected, the election official shall count this as an overvote. If the name written in is the same as the name of the printed candidate selected, the election official shall count this as a vote for the printed candidate selected.

(d) the designated voting area for a printed candidate is marked and the same name is written in but the designated write-in voting area is not marked. The election official shall count this as a vote for the marked designated voting area;

(e) comments are written in which do not indicate a clear vote, and no candidate is marked. The election official shall count this as an undervote;

(f) the designated voting area for a printed candidate is marked, a comment is written in, and the corresponding designated write-in voting area is or is not marked. The election official shall count this as a vote for the printed candidate, unless the comment creates uncertainty about who the choice is or directs the election official not to count the vote for the printed candidate selected. In the latter case, the election official shall count this as an undervote. (History: Sec. 13-15-206, MCA; IMP, Sec. 13-15-206, MCA; NEW, 2004 MAR p. 93, Eff. 1/16/04.)

44.3.2404 DETERMINING A VALID VOTE ON A DIRECT RECORDING ELECTRONIC (DRE) BALLOT (1) A vote on a touch-screen direct recording electronic voting system or other electronic voting system consists of a voter's selection of a candidate or answer to a ballot question appearing on the voting surface of the device, followed by the voter activating the cast vote indicator.

(a) All DRE equipment shall provide for the use of a device for the voter to enter the name of a write-in candidate where applicable. Except as provided in ARM 44.3.2405, a write-in vote may be counted only if the write-in vote identifies an individual by any of the designations filed pursuant to 13-10-211(1)(a), MCA.

(b) If a voter does not mark a candidate, judicial retention choice, or issue choice, the valid votes for other candidates or issues on the same ballot shall be counted. (History: Sec. 13-15-206, MCA; IMP, Sec. 13-15-206, MCA; NEW, 2004 MAR p. 93, Eff. 1/16/04.)

44.3.2405 DETERMINING A VALID VOTE ON A FEDERAL WRITE-IN ABSENTEE BALLOT (1) A United States elector 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. 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. (History: Sec. 13-15-206, MCA; IMP, Sec. 13-21-205, MCA; NEW, 2004 MAR p. 93, Eff. 1/16/04.)

44.3.2406 APPLICABILITY TO ELECTIONS ALLOWING VOTES FOR MORE THAN ONE CANDIDATE FOR A POSITION (1) The rules in this subchapter shall be applied consistently with necessary adjustments for elections in which electors may cast votes for more than one candidate for a position. (History: Sec. 13-15-206, MCA; IMP, Sec. 13-15-206, MCA; NEW, 2004 MAR p. 93, Eff. 1/16/04.)

Sub-Chapter 25

United States Electors

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

(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) pursuant to 13-21-201, MCA, there is no limit on the earliest date that a United States elector may request an absentee ballot;

(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) in even-year general elections, election administrators must notify United States electors that the voter information pamphlet is available online, which can be accomplished through either:

(i) the absentee elector instructions; or

(ii) a special insert in materials provided to the absentee elector. (History: Sec. 13-21-104, MCA; IMP, 13-21-201, MCA; NEW, 2004 MAR p. 93, Eff. 1/16/04.)

44.3.2502 FACSIMILE MACHINE ACCESS (1) A county election administrator desiring to offer this service, must use a facsimile machine that is secure from unauthorized access. Access to the facsimile machine must be limited by the following means:

(a) it is physically located in the office of the election administrator; or

(b) it has the technological ability to store the ballots that are faxed and that ballots stored in such manner can only be accessed by the election administrator or specially appointed deputies. (History: Sec. 13-21-104, MCA; IMP, Sec. 13-21-207, MCA; NEW, 2004 MAR p. 93, Eff. 1/16/04.)

44.3.2503 HANDLING OF FACSIMILE BALLOTS (1) Facsimile ballots for United States electors shall be handled in the same manner as absentee ballots when the facsimile balloting rules do not specify procedure. (History: Sec. 13-21-104, MCA; IMP, Sec. 13-21-207, MCA; NEW, 2004 MAR p. 93, Eff. 1/16/04.)

44.3.2504 BALLOT TRANSMISSION (1) Upon request for a facsimile ballot, an election administrator who has received a valid application from a United States elector shall send by facsimile transmission a ballot and a transmission slip containing instructions to the elector 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 by a panel of no less than two election judges.

(2) The original transmission slip and original ballot shall be retained in a secure absentee envelope. (History: Sec. 13-21-104, MCA; IMP, Sec. 13-21-207, MCA; NEW, 2004 MAR p. 93, Eff. 1/16/04.)

44.3.2505 RECEIVING BALLOTS (1) The election administrator shall receive all facsimile ballots. As the ballots are printed out by the machine, they shall be checked by the election administrator to ensure that they are:

(a) readable in that the transmission has not made it impossible for the election judges to determine the elector's intentions; and

(b) the elector has signed an affirmation. (History: Sec. 13-21-104, MCA; IMP, Sec. 13-21-207, MCA; NEW, 2004 MAR p. 93, Eff. 1/16/04.)

Sub-Chapter 26

Administrative Complaint Procedures

44.3.2601 ADMINISTRATIVE COMPLAINT PROCEDURES (1) The procedures in this rule shall be uniform and nondiscriminatory.

(2) Under this rule, any individual who believes that there is a violation of any provision of Title III of the Help America Vote Act of 2002 (hereinafter referred to as Title III), including a violation which has occurred, is occurring, or is about to occur, may file a complaint.

(3) Any complaint filed under this rule shall be in writing and notarized, and signed and sworn by the individual filing the complaint, and include the full name, telephone number, and mailing address of the complainant.

(4) The secretary of state may consolidate complaints filed under this rule.

(5) The secretary of state shall designate a presiding officer for any complaint under this rule. The secretary of state may, upon agreement of all the parties, resolve the complaint informally, and issue a final determination without a formal proceeding.

(6) At the request of the complainant, there shall be a hearing on the record. If a hearing on the record is requested, the complainant must so state. Any such hearing shall be held at a date and time and place determined by the secretary of state and at the discretion of the secretary of state the hearing may be conducted by telephone or upon written documentation. If the hearing is on consolidated complaints, then the complainants shall designate a single representative party to advocate for the consolidated complaint. If the presiding officer permits witnesses to testify, then they must be sworn in prior to their testimony being given. If a complainant fails to pursue a complaint, then the complaint shall be dismissed with prejudice.

(7) If, under this rule, the secretary of state determines that there is a violation of any provision of Title III, the secretary of state shall provide an informal opinion.

(8) If, under this rule, the secretary of state determines that there is no violation or that the complainant did not follow the above procedures in filing the complaint or the complaint does not on its face allege a violation of Title III with regard to a federal election, the secretary of state shall dismiss the complaint and publish the results of the procedures.

(9) The secretary of state shall make a final determination with respect to a complaint prior to the expiration of the 90-day period that begins on the date the complaint is filed, unless the complainant consents to a longer period for making such a determination.

(10) If the secretary of state fails to meet the deadline applicable under this rule, the complaint shall be resolved within 60 days under alternative dispute resolution procedures established for purposes of this rule. The record and other materials from any proceedings conducted under the complaint procedures established under this rule shall be made available for use under the alternative dispute resolution procedures.

(11) If a final determination of a complaint was not made within 90 days of the filing of the complaint and the complainant did not agree in writing to an extension, then the complaint shall be referred to a review panel comprised of three staff members of the office of the secretary of state. The three-member review panel shall issue a final determination on the complaint within 60 days of the referral. The review panel shall make its determination on the record of the hearing and shall not conduct any further proceedings, if the hearing was held and completed. If the hearing was not held or completed, then the review board shall conduct the hearing as prescribed above.

(12) At any time before, during or prior to this process the complainant retains the right to file an action in any court of appropriate jurisdiction or to withdraw the complaint. No exhaustion of this administrative remedy is required. (History: Sec. 13-1-202, MCA, Public Law 107-252; IMP, Sec. 13-1-202, MCA, Public Law 107-252; NEW, 2004 MAR p. 93, Eff. 1/16/04.)