

Rule Subchapter: 44.3.1

Subchapter Title: Voting Accessibility



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44.3.1: Voting Accessibility



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44.3.101 INTRODUCTION, SCOPE, AND INTENT

(1) The purpose of these rules is to establish minimum guidelines to be used in determining whether facilities used for voting in certain elections are accessible to electors with disabilities and elderly electors pursuant to the Americans With Disabilities Act, 42 U.S.C. 12132, and the **Voting Accessibility for the Elderly and Handicapped Act, 42 U.S.C. 1973ee, et seq.**

(2) It is the intent of the secretary of state's office that county governing bodies and election administrators work together and proceed in good faith to fully comply with the Americans With Disabilities Act.

(3) For the purpose of clarity and throughout these rules, the Voting Accessibility for the Elderly and Handicapped Act shall be referred to as the Voting Accessibility Act. The Americans With Disabilities Act will be referred to as the ADA.

(4) These rules shall only apply to federal elections conducted under [13-1-104](#) and [13-1-107](#), MCA.

History: [13-1-202](#), [13-3-205](#), MCA; IMP, [13-1-202](#), [13-3-205](#), MCA; NEW, 1986 MAR p. 462, Eff. 3/28/86; AMD, 2006 MAR p. 2671, Eff. 10/27/06; AMD, 2012 MAR p. 760, Eff. 4/13/12.

44.3.102 ROLE OF SECRETARY OF STATE

(1) The Secretary of State is empowered under the Voting Accessibility Act, [13-1-202](#), MCA, and these rules to:

(a) establish guidelines that define and determine **accessibility at the polling place**;

(b) prescribe the forms and materials necessary to ensure uniformity in the surveying of polling places;

(c) determine what constitutes an emergency that allows an exemption from accessibility status;

(d) grant exemptions to the requirement that a polling place shall be accessible to the elderly and individuals with disabilities;

(e) establish procedures to ensure that any individual with a disability or elderly voter assigned to an inaccessible polling place will be provided with an alternative means for casting a ballot on election day;

(f) provide public notice, calculated to reach individuals with disabilities or elderly electors in a timely manner, of the:

(i) availability of aids under the Voting Accessibility Act;

(ii) assistance under **section 208 of the Voting Rights Act of 1965 (42 U.S.C. 1973aa-6)**; and

(iii) procedures for voting by absentee ballot; and

(g) report to the applicable federal agency, in a manner to be determined by the agency:

(i) the number of accessible polling places in the state;

(ii) the number of inaccessible polling places; and

(iii) the reasons for each instance of inaccessibility.

(2) These are the rules adopted to establish and maintain uniformity in the implementation of the Voting Accessibility Act.

History: **This rule is advisory only**, but may be considered a correct interpretation of the law. [13-3-205](#), MCA; [IMP](#), [13-3-205](#), MCA; [NEW](#), 1986 MAR p. 462, Eff. 3/28/86; [AMD](#), 2008 MAR p. 1329, Eff. 6/27/08.

44.3.104 GUIDELINES FOR POLLING PLACE ACCESSIBILITY

(1) 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.

History: [13-3-205](#), MCA; [IMP](#), [13-3-205](#), MCA; [NEW](#), 1986 MAR p. 462, Eff. 3/28/86; [AMD](#), 2006 MAR p. 2671, Eff. 10/27/06; [AMD](#), 2008 MAR p. 1329, Eff. 6/27/08; [AMD](#), 2010 MAR p. 1319, Eff. 5/28/10.

44.3.105 SURVEY PROCEDURE TO DETERMINE ACCESSIBILITY

(1) Unless specified otherwise, the election administrator shall conduct an on-site survey in each polling place 45 days prior to utilizing that facility, as provided in [ARM 44.3.109](#), to determine whether such facilities are in compliance with the criteria set forth in these rules.

(2) Election administrators should encourage county commissioners, election judges, members of the election administrator's staff, and a voting accessibility advisory committee to participate in the survey procedure.

(3) The survey shall be conducted in such a manner as to represent the actual path of travel an elector would take upon arrival at the polling place on election day.

(4) A form prescribed by the Secretary of State shall be used as a checklist for each polling place surveyed. Copies of the survey shall be made available for public inspection and to the Secretary of State upon request, except as provided in (5).

(5) If an existing polling place fails to satisfy the criteria for accessibility and cannot be permanently or temporarily altered in a safe and reasonable manner to satisfy the criteria before the date of the election, it will be designated "inaccessible" and shall not be used unless an exemption is granted by the Secretary of State in accordance with the provisions of [ARM 44.3.106](#).

(6) A copy of all survey forms for polling places shall be forwarded to the Secretary of State 45 days prior to the election for which the survey was conducted.

(7) A request for exemption form, as prescribed by the Secretary of State, and defined in [ARM 44.3.106](#), shall be attached to the survey for those polling places designated as "inaccessible".

History: [13-3-205](#), MCA; [IMP](#), [13-3-206](#), MCA; [NEW](#), 1986 MAR p. 462, Eff. 3/28/86; [AMD](#), 1996 MAR p. 3221, Eff. 12/20/96; [AMD](#), 2008 MAR p. 1329, Eff. 6/27/08; [AMD](#), 2010 MAR p. 1545, Eff. 6/25/10.

44.3.106 EXEMPTION PROCEDURE

(1) If an existing polling place has been surveyed and designated as "inaccessible", the election administrator shall make a reasonable effort to seek and survey for accessibility other potential sites with comparable utility as a polling place.

(2) If potential polling place facilities have been surveyed and no accessible facility is available and the facilities which are available cannot safely and reasonably be made temporarily accessible, the election administrator shall request in writing to the Secretary of State that the existing polling place be exempt from the criteria set forth in these rules.

(3) A separate request for exemption shall be submitted for each polling place not in compliance. The request shall identify the polling place, how it is not in compliance, the efforts being made to bring it into compliance, and the efforts to locate an alternate site.

(4) Within 30 days following the receipt of a request for exemption, the Secretary of State may grant a certification of exemption to the election administrator for that polling place. Such exemption, if granted, shall be valid for a period of three years from the date of issuance.

(5) The Secretary of State may grant an exemption pursuant to this subchapter if all potential polling places have been surveyed and the election administrator has certified that:

(a) an accessible polling place is not available and the county cannot safely or reasonably make a polling place temporarily accessible in the area involved; or

(b) the location is designated inaccessible because it is a rural polling place and designation of an accessible facility as a polling place will require excessive travel or impose other hardships for the majority of qualified electors in the polling place.

(6) If the Secretary of State has reason to believe such an exemption would not be in the best interest of the majority of the individuals with disabilities or elderly electors, he shall deny the exemption and:

(a) report to the election administrator and the county governing body his reasons for the denial.

(7) A polling place designated 45 days prior to an election as inaccessible because it is rural shall be exempt from the on-site survey procedure provided in ARM [44.3.108](#).

(8) If one or more individuals with disabilities or elderly electors contact the election administrator or the Secretary of State concerning a specific exemption, the Secretary of State shall work in cooperation with the election administrator and the individuals with disabilities or elderly person(s) in locating an available facility that is accessible or providing an acceptable alternative method of voting according to the provisions in ARM [44.3.110](#).

History: [13-3-205](#), MCA; [IMP](#), [13-3-207](#), [13-3-212](#), MCA; [NEW](#), 1986 MAR p. 462, Eff. 3/28/86; [AMD](#), 1996 MAR p. 3221, Eff. 12/20/96; [AMD](#), 2008 MAR p. 1329, Eff. 6/27/08; [AMD](#), 2010 MAR p. 1545, Eff. 6/25/10.

44.3.107 EMERGENCY EXEMPTION

(1) If a polling place designated "accessible" becomes unavailable for reasons such as loss of lease, fire, snow, or other natural disasters less than ten days prior to an election, an emergency exists and an alternate polling place shall be selected.

(2) The alternate polling place shall be considered temporary and shall be exempt from the procedures established by these rules, except for the provisions provided by ARM [44.3.111](#) and [44.3.112](#).

(3) The alternate polling place shall not be used in the next ensuing election unless it is subject to the procedures provided in ARM [44.3.105](#) and [44.3.106](#).

History: **This rule is advisory only**, but may be considered a correct interpretation of the law. [13-3-205](#), MCA; [IMP](#), [13-3-211](#), MCA; [NEW](#), 1986 MAR p. 462, Eff. 3/28/86; [AMD](#), 2008 MAR p. 1329, Eff. 6/27/08.

44.3.109 VOTING ACCESSIBILITY ADVISORY COMMITTEE

(1) An election administrator may establish one or more voting accessibility advisory committee(s) (V.A.A.C.).

(2) Each committee shall consist of a minimum of three members, two of which shall represent an organization of elderly persons or an organization of individuals with disabilities.

(3) The committee may assist in surveying polling places for compliance with accessibility guidelines.

(4) The election administrator shall provide the Secretary of State with a list of the members of each voting accessibility advisory committee, including addresses and telephone numbers.

(5) Each member of the committee may be compensated for the number of hours worked and reimbursed for actual travel expenses incurred while participating in the conduct of an on-site survey.

(6) The election administrator may pay each member the same compensation and certify amounts due in the same manner as for an election judge as provided by [13-4-106](#)(1), MCA.

History: **This rule is advisory only**, but may be considered a correct interpretation of the law. [13-3-205](#), MCA; [IMP](#), [13-3-205](#), MCA; [NEW](#), 1986 MAR p. 462, Eff. 3/28/86; [AMD](#), 2008 MAR p. 1329, Eff. 6/27/08.

44.3.110 ALTERNATIVE MEANS FOR CASTING BALLOT

(1) The election administrator shall provide an alternative method of voting for those electors who are unable, because of disability or age, **to access their regular polling place**. Those methods are limited to the following:

(a) the practice, commonly referred to as "curbside voting", as provided by [13-13-118](#), MCA;

(b) absentee balloting, as provided by [13-13-222](#) and [13-13-246](#), MCA; and

(c) prearranged assignment to an accessible polling place within the county. An elector, prevented from voting at his own polling place on election day because it has been exempt from meeting the accessibility criteria set forth in these rules, shall:

(i) notify the election administrator, in writing at least seven days preceding the election, of his desire to vote on election day at an accessible polling place;

(ii) be assigned to the nearest accessible polling place for the purpose of voting in that election;

(iii) sign his name on a special addendum to the official precinct register, as required by [13-2-601](#), MCA; and

(iv) receive the same ballot to which he is otherwise entitled.

(2) For the purposes of this rule, the ballot shall be processed and counted in the same manner as an absentee ballot.

History: [13-3-205](#), [13-13-246](#), MCA; [IMP](#), [13-3-213](#), [13-13-246](#), MCA; [NEW](#), 1986 MAR p. 462, Eff. 3/28/86; [AMD](#), 2008 MAR p. 1329, Eff. 6/27/08; [AMD](#), 2015 MAR p. 1286, Eff. 10/1/15.

[44.3.111](#) THE ELDERLY ELECTOR

(1) The Voting Accessibility Act defines "elderly" as 65 years of age or older.

(2) The following requirements are intended to benefit elderly electors and shall be implemented by the 1986 June primary election:

(a) Election administrators shall conspicuously display instructions for voting, printed in over-size type, preferably 18 point type, or larger, at each polling place for every election and instructions for registering at each permanent registration facility.

(b) Each polling place shall have a desk, table, or other surface no more than 36 inches in height, with room to accommodate a chair or a wheelchair to permit physically feeble or mobility-impaired electors to vote in a seated position. Adequate privacy shall be provided to ensure the seated elector the same degree of ballot secrecy enjoyed by other electors.

(c) In all polling places in which a stylus is used to mark voting device ballots, at least one stylus shall have a large, easily graspable handle. At least one pen or pencil in each polling place shall be over-sized and easily graspable.

(d) Extra seating shall be provided for elderly electors to rest while waiting their turn to vote. Election judges shall ensure that the seating is available for those for whom it is intended.

History: [This rule is advisory only](#), but may be considered a correct interpretation of the law. [13-1-202](#), [13-13-111](#), [13-13-112](#), MCA; [IMP](#), [13-1-202](#), [13-13-111](#), [13-13-112](#), MCA; [NEW](#), 1986 MAR p. 462, Eff. 3/28/86.

44.3.112 THE VISUALLY IMPAIRED

(1) Visually impaired persons can range from those with slight visual problems, not correctable by normal means, to the totally blind. In addition to the large-type printing requirements, as provided by ARM [44.3.111](#)(2)(a), requirements and suggestions for the visually impaired electors include the following:

- (a) adequate lighting shall be provided in both the voting booth and the polling place;
- (b) a magnifying glass may be provided in those polling places where the election administrator's common knowledge indicates a need; and
- (c) a plastic or cardboard card with a space cut out for a signature may be provided as a guide for signing a precinct register.

History: **This rule is advisory only**, but may be considered a correct interpretation of the law. [13-1-202](#), [13-13-111](#), [13-13-112](#), MCA; [IMP](#), [13-1-202](#), [13-13-111](#), [13-13-112](#), MCA; [NEW](#), 1986 MAR p. 462, Eff. 3/28/86.

44.3.113 TELECOMMUNICATIONS DEVICE FOR THE HEARING IMPAIRED

(1) Sixty days prior to each election, the Secretary of State shall install and advertise access to a toll-free telecommunications device for the deaf (TDD) for the purpose of providing:

- (a) information on registration;
 - (b) voting aids available for the handicapped;
 - (c) assistance under section 208 of the Voting Rights Act of 1965; and
 - (d) procedures for voting by absentee ballot.
- (2) The Secretary of State shall advertise the TDD number wherever possible.

History: **This rule is advisory only**, but may be considered a correct interpretation of the law. [13-3-205](#), MCA; [IMP](#), [13-3-205](#), MCA; [NEW](#), 1986 MAR p. 462, Eff. 3/28/86; [AMD](#), 2008 MAR p. 1329, Eff. 6/27/08.

44.3.114 COMPLAINTS

(1) Within five working days following the receipt of a written notification from the United State's Attorney General or a person who is personally aggrieved by the noncompliance of his polling place with the Voting Accessibility Act, the Americans With Disabilities Act, and/or these rules, the Secretary of State shall transmit a copy of the notification to the appropriate election administrator.

(2) Upon receipt of the notification, the election administrator shall forward to the Secretary of State a copy of the survey form concerning the polling place in question.

(3) Within 30 days of receipt of the notification, the Secretary of State shall cause an independent survey of the polling place to be conducted. A report of that survey shall be provided to the complainant and the election administrator.

(4) If the complainant requests, in writing, that further action be taken, the Secretary of State may call for a hearing in which the complainant, election administrator,

representatives of the county governing body, affected groups and his office may be represented.

(a) The purpose of the hearing is to show cause why the particular polling place facility should be:

(i) denied exemption from meeting the criteria established for accessibility by these rules;

(ii) be denied an "accessible" rating; or

(iii) be declared unacceptable for use as a polling place facility and no longer utilized for that purpose.

(5) At any time before, during, or after 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: **This rule is advisory only**, but may be considered a correct interpretation of the law. [13-1-202](#), [13-3-205](#), MCA; [IMP](#), [13-1-202](#), [13-3-205](#), MCA; [NEW](#), 1986 MAR p. 462, Eff. 3/28/86; [AMD](#), 2006 MAR p. 2671, Eff. 10/27/06.

44.3.115 CRITERIA AND PROCESS FOR A PERSON TO BECOME A DESIGNATED AGENT FOR AN ELECTOR WITH A DISABILITY

(1) Consistent with [13-1-116](#), MCA, an elector with a disability who is unable to provide a signature may apply to the election administrator to have another person designated as an agent for purposes of providing a signature or identifying mark required pursuant to Title 13, MCA, and for delivering the disabled elector's absentee ballot application to the county election administrator, as provided in [13-13-213](#), MCA.

(2) An application for designation of an agent by an elector under this section:

(a) must be made on a form prescribed by the Secretary of State which shall state the authorization of the elector, the purpose of the agency, and shall require that the authorization be witnessed by two disinterested witnesses and signed by the designated agent;

(b) may be obtained from local election officials, from the office of the Secretary of State, and from any other entity that provides the form; and

(c) must be completed in its entirety.

(3) An agent chosen under this rule must not be the elector's employer, an agent of the individual's employer, or an officer or agent of the voter's union.

(4) An election official must ask if the person being designated an agent is the voter's employer or employer's agent or officer or agent of the voter's union. If the proposed agent is one of those individuals, the voter must choose another person to be the elector's agent.

(5) An agent must be chosen by the individual with a disability.

History: [13-1-116](#), MCA; [IMP](#), [13-1-116](#), MCA; [NEW](#), 2006 MAR p. 2671, Eff. 10/27/06.

44.3.116 ELECTRONIC TRANSMISSION OF VOTING MATERIALS

(1) County election administrators shall allow electors with disabilities, as defined in [13-3-202](#), MCA, to receive 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 following procedures shall be followed, wherever applicable, in regard to the transition of election materials from the election administrator to electors electronically:

(a) A county election administrator must use a system that is secure from unauthorized access.

(b) When an election administrator receives a valid application for electronic transmission of a ballot from an elector with disabilities, the election administrator shall, subject to (1), e-mail the elector the ballot, instructions to the elector, and a transmittal cover sheet that includes an elector affirmation. **A ballot secrecy envelope and a ballot signature envelope shall be provided either electronically or through the mail** to each elector with a valid application for electronic ballot. The original ballot shall be retained in a secure absentee envelope or container for that purpose.

(c) The election administrator shall keep an official log of all ballots transmitted electronically.

(d) If the received ballot is acceptable, the election administrator shall, without opening the envelope containing the voted ballot, log in the receipt of the ballot and place it in the secure absentee envelope or container with the original ballot. The transmittal cover sheet with affirmation must be retained in a sealed envelope or container separately from the ballots.

(e) On the day before election day or on election day, the election administrator shall have the returned ballots transcribed using the procedure prescribed below.

(f) The voted ballot must be transcribed in a manner that ensures that no one transcribing the ballot has access to the name of the elector who voted the ballot.

(g) No less than three election officials shall participate in the transcription process to transfer the elector's votes from a received ballot, as applicable, to the standard ballot used in the precinct.

(h) An electronically transmitted ballot identifying number shall be written on the original transcribed ballot, the envelope containing the voted ballot and the electronically transmitted ballot, and in the official transcription log.

(i) The election officials who transcribed the electronically transmitted ballot shall sign the log for each ballot they transcribe.

(j) No one participating in the electronic ballot transmission or transcription process may reveal any information about the elector's identity or the votes on the elector's ballot.

History: [13-13-246](#), MCA; [IMP](#), [13-13-246](#), MCA; [NEW](#), 2015 MAR p. 1286, Eff. 10/1/15.

FROM SECRETARY OF STATE'S WEBSITE

<http://sos.mt.gov/elections/officials/forms/index#384234559-accessibility-forms>

Accessibility Forms

[Oath of Elector Unable to Enter or Needing Assistance in Polling Place](#)

[Notice of Polling Place Locations and Accessibility Designations](#)

[Special Addendum to Precinct Register](#) (Word) [PDF](#) version

[Accessibility Survey Checklist and Appendix I, II, III and IV](#)

[Polling Place Exemption Request](#)

[Polling Place Accessibility Complaint Form](#)

[Designation of Agent by Individual with Disability](#) (Word) [PDF](#) version

















[Absentee Application for Electronic Ballot for Individual with Disability](#)

[Electronic Ballot Transmission Cover Sheet for Individual with Disability](#)








[Electronic Ballot Transcription Log](#)

[Low Vision Forms](#)

VOTING MACHINES AND BALLOT UNIFORMITY

<u>Subchapter 17</u> <u>Voting Machines and Devices and Postelection Audit of Voting Machines</u>			
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<u>44.3.1704</u>	CRITERIA OF EXAMINATION		6/25/2010
<u>44.3.1705</u>	COSTS OF EXAMINATION	REP	12/20/1996
<u>44.3.1706</u>	NOTIFICATION TO APPLICANT		6/25/2010
<u>44.3.1707</u>	APPEAL FROM DISAPPROVAL		6/25/2010
<u>44.3.1708</u>	WAIVER OF CONDITIONS		12/20/1996
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<u>44.3.1710</u>	EXTENSION OF PREVIOUS APPROVAL OF VOTING MACHINES OR DEVICES		6/25/2010
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Subchapter 24
Ballot Form and Uniformity and Determining a Valid Vote

<u>44.3.2401</u>	BALLOT FORM AND UNIFORMITY	REP	4/13/2012
<u>44.3.2402</u>	DETERMINING A VALID VOTE IN MANUALLY COUNTING AND RECOUNTING PAPER BALLOTS		4/13/2012
<u>44.3.2403</u>	DETERMINING A VALID WRITE-IN VOTE IN MANUALLY COUNTING AND RECOUNTING PAPER BALLOTS		4/13/2012
<u>44.3.2404</u>	DETERMINING A VALID VOTE ON AN ELECTRONIC VOTING SYSTEM		4/16/2010
<u>44.3.2405</u>	DETERMINING A VALID VOTE ON A FEDERAL WRITE-IN ABSENTEE BALLOT		1/1/2014
<u>44.3.2406</u>	APPLICABILITY TO ELECTIONS ALLOWING VOTES FOR MORE THAN ONE CANDIDATE FOR A POSITION		1/16/2004
<u>44.3.2407</u>	METHOD OF CORRECTION OF BALLOT		9/6/2013
<u>44.3.2408</u>	BALLOT FORM AND UNIFORMITY		9/6/2013

Ballot Form And Uniformity

13-12-202. Ballot form and uniformity. (1) The secretary of state shall adopt statewide uniform rules that prescribe the ballot form for each type of ballot used in this state. The rules must conform to the provisions of this title unless the voting system used clearly requires otherwise. At a minimum, the rules must address:

- (a) the manner in which each type of ballot may be corrected under **13-12-204**;
- (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)**;
- (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)**, 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(5)**.

History: En. Sec. 91, Ch. 368, L. 1969; R.C.M. 1947, 23-3508(4); amd. Sec. 93, Ch. 571, L. 1979; amd. Sec. 22, Ch. 414, L. 2003; amd. Sec. 26, Ch. 242, L. 2011.

44.3.2408 BALLOT FORM AND UNIFORMITY

(1) 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.

History: [13-1-202](#), [13-12-202](#), MCA; IMP, [13-1-202](#), [13-12-202](#), MCA; NEW, 2013 MAR p. 1699, Eff. 9/6/13.