

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 44.3.2203, 44.3.2303, and 44.3.2304 regarding absentee and mail ballot voting) NOTICE OF PROPOSED) AMENDMENT)) NO PUBLIC HEARING) CONTEMPLATED

TO: All Concerned Persons

1. On June 17, 2006, the Secretary of State proposes to amend the above-stated rules.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who 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 9, 2006, to advise us of the nature of the accommodation that you need. Please contact Janice Frankino Doggett, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-5375; FAX (406) 444-4196; or e-mail jdoggett@mt.gov.

3. The proposed amendments will be applied retroactively to the procedures for the June 6, 2006, primary.

4. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

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 by using a standardized form provided by rule by the Secretary of State, or 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. ~~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) remains the same.

(3) Consistent with 13-13-213(1), MCA, and except as provided in 13-13-213(3)(4), MCA, all absentee ballot application forms must be addressed to the appropriate election official. The elector may mail the application directly to the election administrator or deliver the application in person to the election administrator. An agent designated pursuant to 13-1-116, MCA, or a third party, may collect the elector's application and forward it to the election administrator. ~~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.

(4) When applying for an absentee ballot under 13-13-212, MCA, or at any other time by written request of the elector, an elector may also request to be mailed an absentee ballot, as soon as the ballot becomes available, for each subsequent election in which the elector is eligible to vote or only for each subsequent federal election in which the elector is eligible to vote for as long as the elector remains qualified to vote and resides at the address provided in the initial application.

(5) The election administrator shall mail an address confirmation form, prescribed by the Secretary of State, at least 75 days before the election to each elector who has requested an absentee ballot for subsequent elections. The form shall, in bold print, indicate that the elector may update the elector's mailing address using the form. The elector shall sign the form, indicate the address to which the absentee ballot should be sent, and return the form to the election administrator. If the form is not completed and returned, the election administrator shall remove the elector from the register of electors who have requested an absentee ballot for each subsequent election.

(6) The confirmation form specified under (5) shall be returned to the election administrator within the time period specified for receipt of absentee ballot applications under 13-13-211, MCA.

(7) An elector who has been removed from the register of electors who have requested an absentee ballot for each subsequent election may subsequently request to be mailed an absentee ballot for each subsequent election.

AUTH: 13-13-212, MCA

IMP: 13-13-211, 13-13-212, 13-13-213, MCA

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 provisionally registered elector an absentee or mail ballot elector identification form defined under ARM 44.3.2302(1) and prescribed by the Secretary of State.

AUTH: 13-13-603, MCA

IMP: 13-13-201, 13-13-603, MCA

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 a provisionally registered 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 a

provisionally registered absentee or mail ballot elector who failed to provide proper identifying information in the outer return envelope to verify eligibility to vote:

(i) through (b) remain the same.

(c) If the absentee or mail ballot elector identification form is verified through a voter verification system or ~~other~~ another 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) remains the same.

(e) A legally registered elector includes but is not limited to an elector who was properly registered prior to January 1, 2003.

AUTH: 13-13-603, MCA

IMP: 13-13-114, 13-13-201, 13-13-241, 13-19-309, MCA

5. The 2005 Legislature enacted SB 302 and SB 88 that modify the rules of the Secretary of State. These proposed rule amendments have been transmitted to the clerk and recorders and election administrators in the state. The staff of the Secretary of State has provided extensive and ongoing training through written and e-mail directives and modifications to the forms booklet and the Election Judge Handbook regarding legislative enactments. The Secretary of State intends to engage in comprehensive rulemaking after the primary election and after all of the election laws passed by the 2005 Legislature become effective on July 1, 2006. These proposed rule amendments are necessary to clarify the rules related to applications for permanent absentee ballots and the process for requesting absentee ballots, specify that identification is not necessary for legally registered absentee and mail ballot electors, and includes a definition of legally registered elector.

6. Concerned persons may present their data, views, or arguments concerning the proposed action in writing to Janice Frankino Doggett, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801, fax to the office at (406) 444-3976, or e-mail to jdoggett@mt.gov and must be received no later than 5:00 p.m. on June 15, 2006.

7. If persons who are directly affected by the proposed action wish to express their data, views, and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Janice Frankino Doggett, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801, fax to the office at (406) 444-3976, or e-mail to jdoggett@mt.gov. A written request for hearing must be received no later than 5:00 p.m. on June 15, 2006.

8. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of those who are directly affected by the proposed action, from the appropriate administrative rule review committee of the legislature, from a governmental agency or subdivision, or from an association

having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be five based on the number of clerk and recorders and election administrators in Montana.

9. 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 which includes the name and mailing address of the person to receive notices, and specifies that the person wishes to receive notices regarding administrative rules, corporations, elections, notaries, records, Uniform Commercial Code, or a combination thereof. Such written request may be mailed or delivered to the Secretary of State's Office, Administrative Rules Bureau, 1236 Sixth Avenue, P.O. Box 202801, Helena, MT 59620-2801, faxed to the office at (406) 444-3976, e-mailed to jabranscum@mt.gov, or may be made by completing a request form at any rules hearing held by the Secretary of State's Office.

10. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

/s/ Mark A. Simonich for
Brad Johnson
Secretary of State

/s/ Janice Frankino Doggett
Janice Frankino Doggett
Rule Reviewer
Secretary of State

Dated this 8th day of May 2006.