

BEFORE THE SECRETARY OF STATE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 44.3.1716, 44.3.2014 through ) PROPOSED AMENDMENT  
44.3.2016, 44.3.2109, 44.3.2203, and )  
44.3.2304 concerning elections )

TO: All Concerned Persons

1. On September 20, 2011, at 9:30 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Conference Room, Room 206 of the State Capitol Building, at Helena, Montana, to consider the proposed amendment 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 September 13, 2011, 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, Montana, 59620-2801; telephone (406) 461-5173; fax (406) 444-4240; TDD/Montana Relay Service (406) 444-9068; or e-mail [jquintana@mt.gov](mailto:jquintana@mt.gov).

3. The rules as proposed to be amended provide as follows:

44.3.1716 REJECTED BALLOTS -- HANDLING PROVIDED BY RULE

(1) remains the same.

~~(2) The unopened absentee ballot envelope of an elector who has voted in person as provided in 13-13-204, MCA, must be marked "voted in person" and must be initialed by election judges.~~

~~(3)~~ (2) After being handled and marked as provided in this rule, all rejected ballots must be placed in a package or container in which the voted ballots are to be placed and the package or container must be sealed, dated, and marked. After a package or container is sealed pursuant to this section, a package or container may not be opened without a court order.

AUTH: 13-15-108, MCA

IMP: 13-15-108, MCA

REASON: Subsection (2) closely reflects 13-13-204, MCA, prior to its amendment by the 2011 Montana Legislature. Also, (2) assumes that the procedure occurs only at the polling place, but the amendment to 13-13-204, MCA, allows the procedure to occur at the county election office as well.

44.3.2014 MAINTENANCE OF ACTIVE AND INACTIVE VOTER REGISTRATION LISTS FOR ELECTIONS (1) Election administrators shall, in every odd-numbered year do at least one of the following:

(a) and (1)(b) remain the same.

(c) mail a targeted mailing to electors who failed to vote in the preceding federal general election, applicants who failed to provide required information on registration cards, and provisionally registered electors by:

(i) remains the same.

(ii) comparing the ~~list of nonvoters~~ nonvoters and applicants described in (3) against the national change of address files, followed within 30 days by the appropriate forwardable confirmation notices as described in (2) to those electors who appear to have moved from their addresses of record;

(iii) and (1)(c)(iv) remain the same.

(2) Any notices not returned or returned as undeliverable to the election administrator after using the a procedures provided in (1) must be followed by an appropriate confirmation notice that is a forwardable, first-class, postage-paid, self-addressed, return notice. If the elector fails to respond within 30 days of the confirmation notice, the election administrator shall move the elector to the inactive list.

(3) and (4) remain the same.

(5) The name of an elector must be moved by an election administrator from the inactive list to the active list of a county if an elector meets the requirements for registration provided in this chapter and ~~appears in order to vote or votes by absentee ballot~~ meets the requirements provided in 13-2-222, MCA, for reactivation in any election.

(6) remains the same.

AUTH: 13-2-108, MCA

IMP: 13-2-220, MCA

REASON: The amendments to (1) and (2) reflect the amendments made to 13-2-220, MCA, by the 2011 Montana Legislature. Subsection (5) is amended to reference the requirements in 13-2-222, MCA, so that the rule does not need to be updated each time the requirements in 13-2-222, MCA, are changed.

44.3.2015 LATE REGISTRATION PROCEDURES (1) through (3) remain the same.

(4) If an elector has already been sent an absentee ballot for the election, the elector may change the elector's voter registration information ~~only with respect to the next election, and may not receive another ballot from the county in which the voter is newly registered. This voter registration shall become effective on the day following the day of the election for which the elector has already been sent an absentee ballot~~ for that election only if the absentee ballot had not been received and is designated as void.

(5) through (7) remain the same.

AUTH: 13-2-108, MCA

IMP: 13-2-304, 13-2-514, MCA

REASON: Subsection (4) is modified to reflect changes made to 13-2-304, MCA, by the 2011 Montana Legislature.

44.3.2016 STATEWIDE VOTER REGISTRATION DATABASE

(1)(a) through (1)(c) remain the same.

~~(d) procedures and timelines to be used by election administrators when providing the information required in 13-2-123, MCA;~~

~~(e) (d) technical security of the statewide voter registration database;~~

~~(f) (e) information security with respect to keeping from general public distribution driver's license numbers, whole or partial social security numbers, and address information protected from general disclosure pursuant to 13-2-115, MCA; and~~

~~(g) (f) quality control measures for the system and system users.~~

(2) and (3) remain the same.

AUTH: 13-2-108, MCA

IMP: 13-2-108, MCA

REASON: Subsection (1)(d) is being deleted because 13-2-123, MCA, was repealed by the 2011 Montana Legislature.

44.3.2109 PROCEDURES FOR CHALLENGES

(1) An elector's right to vote may be challenged at any time by any registered elector. The challenger must fill out and sign an affidavit stating the grounds of the challenge and providing any evidence supporting the challenge to the election administrator or, on election day, to an election judge.

~~(2) A challenge may be made on the grounds that the elector:~~

~~(a) is of unsound mind, as determined by a court;~~

~~(b) has voted before in that election;~~

~~(c) has been convicted of a felony and is serving a sentence in a penal institution;~~

~~(d) is not registered as required by law;~~

~~(e) is not 18 years of age or older;~~

~~(f) has not been, for at least 30 days, a resident of the county in which the elector is offering to vote, unless the elector is exempt under 13-2-514, MCA, and has been a resident of the state for at least 30 days; or~~

~~(g) is a provisionally registered elector whose status has not been changed to a legally registered voter.~~

~~(3) When a challenge has been made under this rule:~~

~~(a) prior to the close of registration under 13-2-301, MCA, the election administrator shall question the challenger and the challenged elector and may question other persons to determine whether the challenge is sufficient or insufficient to cancel the elector's registration under 13-2-402, MCA; or~~

~~(b) after the close of regular registration or on election day, the election administrator or, on election day, the election judge shall allow the challenged~~

~~elector to cast a provisional paper ballot, which must be handled as provided in 13-15-107, MCA.~~

~~(4) In response to a challenge, the challenged elector may fill out and sign an affidavit to refute the challenge and swear that the elector is eligible to vote.~~

~~(a) If the challenge was not made in the presence of the elector being challenged, the election administrator or election judge shall notify the challenged elector of who made the challenge and the grounds of the challenge and explain what information the elector may provide to respond to the challenge. The notification must be made pursuant to 13-13-301(4)(b), MCA.~~

~~(b) The election administrator or, on election day, the election judge shall also provide to the challenged elector a copy of the challenger's affidavit and any supporting evidence provided.~~

~~(5) The Secretary of State shall provide standardized affidavit forms for challengers and challenged electors.~~

~~(6) (2) Any challenge made under this rule shall be decided in favor of the challenged elector, unless it is demonstrated by a preponderance of the evidence that the challenged elector should not be permitted to vote.~~

AUTH: 13-13-301, MCA

IMP: 13-13-301, MCA

REASON: Subsections of the rule have been deleted because they needlessly repeat statutory language.

44.3.2203 FORM OF ABSENTEE BALLOT APPLICATION AND ABSENTEE BALLOT TRANSMISSION TO ELECTION ADMINISTRATOR (1) through (5) remain the same.

(6) The election administrator shall mail a forwardable address confirmation form, prescribed by the Secretary of State in January of each year to each elector who has requested an absentee ballot for subsequent elections. The annual address confirmation form is for elections to be held between February 1 following the mailing through January of the next year. The form shall, in bold print, indicate that the elector may update the elector's mailing address using the form. The elector or elector's agent 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 subsequent elections~~ annual absentee list.

(7) remains the same.

(8) An elector who has been removed from the ~~register of electors who have requested an absentee ballot for each subsequent election~~ annual absentee list may later request to be mailed an absentee ballot for subsequent elections.

AUTH: 13-1-202, MCA

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

REASON: The amendments to the rule are made to reflect the amendments made to 13-13-212, MCA, by the 2011 Montana Legislature to clarify that it is the annual absentee list, not the register of electors, that is referred to in this statute.

44.3.2304 PROCEDURES FOR ABSENTEE AND MAIL BALLOT VOTING - DETERMINING THE SUFFICIENCY OF IDENTIFICATION OF PROVISIONALLY REGISTERED ELECTORS

(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 a provisionally registered absentee or mail ballot elector has provided sufficient identification defined in ARM 44.3.2302(6) or eligibility information to allow a ballot to be counted:

(a) If the identification or eligibility information is insufficient, an election official or election worker shall follow procedures described in 13-13-241, MCA, and these rules to allow 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) a ballot cast by an elector whose voter identification 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 or eligibility 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 or eligibility 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) and (1)(a)(v) remain the same.

(b) Upon receipt of eligibility information or of one of the forms of required identification defined in ARM 44.3.2302(6), if the identification form is verified through a voter verification process or another form of identification provided in ARM 44.3.2302(6) is sufficient:

(i) an election official or election worker shall mark on the absentee or mail ballot outer return envelope that sufficient eligibility information or identification was provided by the elector; and

(ii) remains the same.

(c) An election official or election worker who receives identification information shall retain in a sealed package the copy of identification provided by the provisionally registered absentee or mail ballot elector. The sealed package containing the copy of identification may not be opened without a court order.

AUTH: 13-13-603, MCA

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

REASON: The rule is amended to reflect statutory changes made by the 2011 Montana Legislature.

4. 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) 444-4240; or e-mail [jquintana@mt.gov](mailto:jquintana@mt.gov), and must be received no later than 5:00 p.m., October 28, 2011.

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

6. 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 4 above or may be made by completing a request form at any rules hearing held by the Secretary of State.

7. 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.

8. 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 15th day of August, 2011.