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TO: State Administration and Veterans' Affairs Interim Committee

FROM: K. Virginia Aldrich

DATE: November 30, 2021

RE: Legislative Administrative Rule Review Report

Pursuant to 5-5-228, MCA, the State Administration and Veterans' Affairs Interim Committee is responsible for reviewing administrative rules within its jurisdiction. Staff for the State Administration and Veterans' Affairs Interim Committee has prepared this report for informational purposes only. This report does not represent any action or opinion of the State Administration and Veterans' Affairs Interim Committee and does not preclude additional action that may be taken by the State Administration and Veterans' Affairs Interim Committee pursuant to its authority under the Montana Administrative Procedure Act (Title 2, chapter 4, MCA).

MAR NOTICE NUMBER: 44-2-251

AGENCY/BOARD: Secretary of State

RULE CLASSIFICATION: (e.g., substantive/interpretive/emergency/temporary): Substantive

SUBJECT: Maintenance of Active and Inactive Voter Registration Lists for Elections

NOTICE DESCRIPTION: (e.g., proposal notice/adoption notice): Notice of Public Hearing on Proposed Amendment

SUMMARY OF RULE(S):

The Secretary of State proposes to amend one rule relating to the maintenance of active and inactive voter registration lists for elections. The proposed amendments require an election administrator to follow certain voter registration list maintenance procedures annually, rather than biennially.

Section 13-2-220, MCA, gives an election administrator three choices to follow annually in maintaining the voter registration lists, including comparing the list of registered voters against the national change of address files and providing "appropriate confirmation notice" to those individuals whose addresses have apparently changed, mailing a notice to all registered electors of a jurisdiction to confirm their address and providing "appropriate confirmation notice" to those individuals who return the notices, or mailing a targeted mailing to certain electors who failed to vote during the preceding federal election, who failed to provide required registration information, or who were provisionally registered. The proposed rule also provides that if an election administrator chooses the first or second choice and completes the procedure in the month of January, "it also satisfies the requirements of 13-13-212(4)(b)," which relates to the maintenance of the absentee ballot elector list.

Section 13-13-212(4)(b), MCA, requires biennially that a "forwardable" address confirmation form be mailed in January of every even-numbered year to each elector who is listed in the national change of address system as having changed the elector's address and who is also on the absentee ballot list. In addition, the form "must request the elector's driver's license number or the last four digits of the elector's social security number." The statute provides other requirements for the form, as well, including how the elector may confirm the elector's address, how the elector may provide the required information, and a requirement for the election administrator's e-mail address for the elector to confirm that the elector wishes to continue to receive an absentee ballot and to provide the requested information.

The first choice identified by the Secretary of State's proposed rule allows an election administrator to perform the annual list maintenance and the biennial absentee maintenance by comparing the entire list of registered electors against the national change of address files and providing appropriate confirmation notice to those individuals whose addresses have apparently changed. This does not conflict with the absentee ballot elector list *only if* an election administrator understands that the "appropriate confirmation notice" must fulfill the other requirements of 13-13-212(4), MCA. The additional requirements are not immediately clear from the wording of the rule, but the additional statutory requirements provided in 13-13-212, MCA, are not excused simply because an election administrator follows the election procedures in 13-2-220, MCA.

The second choice allowed by the Secretary of State's rule to fulfill both the annual elector maintenance and the biennial absentee ballot list maintenance provides that an election administrator may mail a "nonforwardable, first-class, 'return if undeliverable -- address correction requested' notice to all registered electors of each jurisdiction to confirm their addresses and provide the 'appropriate confirmation notice.'" Although the nonforwardable notice must be followed by a forwardable notice to any elector who fails to respond within 30 days (see 13-2-220(3) MCA), the forwardable notice must be mailed in January of an even-numbered year to concurrently satisfy the absentee ballot list maintenance requirements. However, because of the complexity of ensuring the second notice fulfills the absentee ballot list maintenance requirements in January, the Secretary of State has determined that, upon adoption, eliminate the second choice to fulfill both list maintenance requirements concurrently. After the rule is adopted, the proposed rule as updated by the Secretary of State will still allow election administrators the option to use 13-2-220(1)(a), MCA, to be used for both types of list maintenance.

The Secretary of State would consider options to further align the list maintenance required under both statutes, including potentially repealing duplicative processes. If the Secretary of State determines that a statutory solution can further align the statutes, the Secretary of State will present its bill draft request to the committee at the appropriate time.

NOTES: A public hearing will be held on December 10, 2021, at 9 a.m., Secretary of State's Office Conference Room, Room 260, State Capitol Building, Helena, Montana. The public comment period ends on December 17, 2021.

FULL TEXT OF NOTICE: The full text of the proposal notice and the amended proposal may be found online at https://rules.mt.gov/gateway/Cycle_Home.asp?CID=3345.