

Ballots & Voting Systems: Statutory and Administrative References

**EXTRACTS FROM MONTANA CONSTITUTION AND
MONTANA CODE ANNOTATED – 2016***

**No changes to these provisions were enacted in 2017*

AND

APPLICABLE ADMINISTRATIVE RULES

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For the State Administration and Veterans' Affairs Interim Committee

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TABLE OF CONTENTS

MONTANA CONSTITUTION

Part IV. SUFFRAGE AND ELECTIONS

[Section 1. Ballot](#)

MONTANA CODE ANNOTATED

[13-1-101 Definitions](#)

[13-1-102 Elections by secret ballot](#)

[13-13-119 Aid to disabled elector](#)

CHAPTER 17 – VOTING SYSTEMS

Part 1. General Provisions

[13-17-101 Secretary of state to approve voting systems](#)

[13-17-102 Use of qualified technicians and advisers](#)

[13-17-103 Required specifications for voting systems](#)

[13-17-104 Providing voting systems -- payment](#)

[13-17-105 Experimental use of voting systems](#)

[13-17-106 General application of election laws](#)

[13-17-107 Secretary of state to prescribe rules](#)

[13-17-108 Punchcard voting systems prohibited](#)

Part 2. Preparation for Use of Systems

[13-17-201 Election administrator to instruct election judges](#)

[13-17-203 Publication of information concerning voting systems](#)

[13-17-204 Voting systems to be exhibited](#)

[13-17-211 Uniform procedures for using voting systems](#)

[13-17-212 Performance testing and certification of voting systems prior to election](#)

Part 3. Voting Procedure

[13-17-306 Use of separate paper ballots for voting on certain candidates or issues](#)

Part 5. Postelection Audit

[13-17-501 Short title](#)

[13-17-502 Definitions](#)

[13-17-503 Random-sample audit of vote-counting machines required -- rulemaking authority](#)

[13-17-504 County audit committee -- membership -- oath required](#)

[13-17-505 Selection process for random-sample audit](#)

[13-17-506 Conduct of random-sample audit](#)

[13-17-507 Discrepancies -- substitution of results -- examination of machines](#)

[13-17-508 Reimbursement of county costs](#)

[13-17-509 Vote-counting machine maintenance -- examination](#)

ADMINISTRATIVE RULES – OFFICE OF THE SECRETARY OF STATE

Montana Constitution

ARTICLE IV SUFFRAGE AND ELECTIONS

Section 1. Ballot. All elections by the people shall be by secret ballot.

Montana Code Annotated

TITLE 13 CHAPTER 1 GENERAL PROVISIONS

13-1-101. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply: ...

(5) "Ballot" means a paper ballot counted manually or a paper ballot counted by a machine, such as an optical scan system or other technology that automatically tabulates votes cast by processing the paper ballots. ...

(51) "Valid vote" means a vote that has been counted as valid or determined to be valid as provided in 13-15-206.

(52) "Voted ballot" means a ballot that is:

- (a) deposited in the ballot box at a polling place;
- (b) received at the election administrator's office; or
- (c) returned to a place of deposit.

(53) "Voting system" or "system" means any machine, device, technology, or equipment used to automatically record, tabulate, or process the vote of an elector cast on a paper ballot.

13-1-102. Elections by secret ballot. All elections shall be by secret ballot.

TITLE 13 CHAPTER 12 ELECTION SUPPLIES AND BALLOTS

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).

TITLE 13

CHAPTER 13

ELECTION PROCEDURE

13-13-119. Aid to disabled elector. (1) When a disabled elector enters a polling place, an election judge shall ask the elector if the elector wants assistance.

(2) An election judge or an individual chosen by the disabled elector as specified in subsection (5) may aid an elector who, because of physical disability or inability to read or write, needs assistance in marking the elector's ballot.

(3) The election judges shall require a declaration of disability by the elector. The declaration must be made under oath, which must be administered by an election judge.

(4) The elector may be assisted by two judges who represent different parties. If election judges who represent different political parties are not available, the chief election judge shall appoint two election judges to assist the elector. The judges shall certify on the precinct register opposite the disabled elector's name that the ballot was marked with their assistance. The judges may not reveal information regarding the ballot.

(5) Instead of assistance as provided in subsection (4), the elector may request the assistance of any individual the elector designates to the judges to aid the elector in the marking of the elector's ballot. An individual designated to assist the elector shall sign the individual's name on the precinct register beside the name of the elector assisted. The individual chosen may not be the elector's employer, an agent of the elector's employer, or an officer or agent of the elector's union.

(6) No elector other than the elector who requires assistance may divulge to anyone within the polling place the name of any candidate for whom the elector intends to vote or may ask or receive the assistance of any individual within the polling place in the preparation of the elector's ballot.

TITLE 13

CHAPTER 17

VOTING SYSTEMS

Chapter Compiler's Comments

Preamble: The preamble attached to Ch. 414, L. 2003, provided: "WHEREAS, the U.S. Supreme Court in *Bush v. Gore*, 531 U.S. 98 (2000), found that the lack of uniform procedures for determining voter intent in Florida during the 2000 presidential election led to a violation of the U.S. Constitution's Equal Protection Clause of the 14th Amendment; and

WHEREAS, at the request of the 57th Legislature, the State Administration and Veterans' Affairs Interim Committee devoted much of the 2001-2002 interim to a review of Montana election laws with respect to voting systems and counting processes in light of *Bush v. Gore*; and

WHEREAS, the interim study found that Montana's statutory provisions relating to ballots, voting systems, and vote counting processes needed to be updated, clarified, and in some instances revised to better define uniform standards and procedures to provide equal protection for votes cast by Montana voters; and

WHEREAS, the Subcommittee on Voting Systems of the State Administration and Veterans' Affairs Interim Committee agreed that statutory changes should be made with an eye on future technology but should also standardize current practices to the greatest extent possible.

THEREFORE, this legislation will enable the Secretary of State to adopt a statewide benchmark performance measure that voting systems must meet before they can be approved for use in the state; allow local election administrators to continue to choose which of the approved voting systems should be used locally; require the Secretary of State to adopt uniform statewide rules regarding ballot form, votes and vote counts, and other operational procedures specific to each voting system and to provide training to local election administrators; and require all counting boards to use the uniform counting procedures specified."

Part 1

General Provisions

13-1-101. Definitions. ...

(53) "Voting system" or "system" means any machine, device, technology, or equipment used to automatically record, tabulate, or process the vote of an elector cast on a paper ballot.

13-17-101. Secretary of state to approve voting systems. (1) A voting system may not be used for any election in this state unless the system is approved by the secretary of state as provided in this section.

(2) The secretary of state shall:

(a) examine a voting system proposed for use to determine if it complies with the requirements of 13-17-103;

(b) within 30 days after examining the voting system, file a report of the examination in the secretary of state's office;

(c) include in the report the reasons for the voting system's approval or disapproval and the secretary of state's opinion about the economic and procedural impact that the voting system's use or nonuse may have on the various counties of this state; and

(d) within 5 days after filing the report, transmit to each election administrator, including school election administrators for elections under Title 20, chapter 20, a copy of the report.

(3) Voting systems may not be used in an election unless approved by the secretary of state 60 days or more prior to the election at which they will be used.

13-17-102. Use of qualified technicians and advisers. (1) To the extent that funds are available, the secretary of state may compensate qualified technicians and advisers to assist in carrying out the secretary of state's duties required by 13-17-101.

(2) An entity submitting a voting system for examination shall pay to the secretary of state certain costs connected with the examination based on an agreement reached between the two parties.

13-17-103. Required specifications for voting systems. (1) A voting system may not be approved under 13-17-101 unless the voting system:

- (a) allows an elector to vote in secrecy;
- (b) prevents an elector from voting for any candidate or on any ballot issue more than once;
- (c) prevents an elector from voting on any office or ballot issue for which the elector is not entitled to vote;
- (d) allows an elector to vote only for the candidates of the party selected by the elector in the primary election;
- (e) allows an elector to vote a split ticket in a general election if the elector desires;
- (f) allows each valid vote cast to be registered and recorded within the performance standards adopted pursuant to subsection (2);
- (g) is protected from tampering for a fraudulent purpose;
- (h) prevents an individual from seeing or knowing the number of votes registered for any candidate or on any ballot issue during the progress of voting;
- (i) allows write-in voting;
- (j) will, if purchased by a jurisdiction within the state, be provided with a guarantee that the training and technical assistance will be provided to election officials under the contract for purchase of the voting system;
- (k) uses a paper ballot that allows votes to be manually counted; and
- (l) allows auditors to access and monitor any software program while it is running on the system to determine whether the software is running properly.

(2) To implement the provisions of subsection (1)(f), the secretary of state shall adopt rules setting a benchmark performance standard that must be met in tests by each voting system prior to approval under 13-17-101. The standard must be based on commonly accepted industry standards for readily available technologies.

13-17-104. Providing voting systems — payment. (1) The county governing body may, as practicable, provide for the use of any voting system approved pursuant to 13-17-101.

(2) Funds for voting systems may be provided by the same methods available for other capital equipment purchases by the county.

(3) The governing body of a county may put the question of purchasing voting systems or the question of which type of voting system to purchase to the registered electors of the county by the same method that any other question is referred to the electors.

(4) A county governing body may, in the manner provided in rules adopted under 13-17-107, submit a voting system for consideration under 13-17-101.

13-17-105. Experimental use of voting systems. The governing body of a county may, without adoption or purchase of the voting system, provide for the experimental use in one or more precincts at an election of a voting system that has been approved by the secretary of state under 13-17-101. The voting system's use at the election is valid for all purposes as if the system had been formally adopted or purchased by the county.

13-17-106. General application of election laws. All laws applicable to elections when voting is not done using a voting system and all penalties prescribed for violations of those laws apply to elections and precincts when voting systems are used if those laws are not in conflict with the provisions of this chapter.

13-17-107. Secretary of state to prescribe rules. (1) The secretary of state may prescribe rules for the submission of voting systems for examination and additional requirements for approval of voting systems.

(2) The secretary of state shall prescribe rules for the complete procedures necessary to use each type of voting system now approved for use in this state and for each type of system approved for use under the provisions of this chapter.

13-17-108. Punchcard voting systems prohibited. A punchcard voting system may not be used in an election after December 31, 2003.

Part 2 Preparation for Use of Systems

13-17-201. Election administrator to instruct election judges. (1) Before each election in which a voting system is used, the election administrator shall instruct all election judges in the use of the system as provided in 13-4-203.

(2) A chief election judge may not serve in a precinct where a voting system is used unless the judge has received the required instruction, is fully qualified to perform duties in connection with the system, and has received a certificate to that effect from the election administrator.

13-17-203. Publication of information concerning voting systems. (1) Not more than 10 or less than 2 days before an election at which a voting system will be used by voters, the election administrator shall broadcast on radio or television, as provided in 2-3-105 through 2-3-107, or publish in a newspaper of general circulation in the county:

(a) a diagram showing the voting system to be used by voters and a sample of the ballot layout (in newspaper only);

(b) a statement of the locations where voting systems to be used by voters are on public exhibition; and

(c) instructions on how to vote.

(2) The election administrator shall select the method of notification that the election administrator believes is best suited to reach the largest number of potential electors.

13-17-204. Voting systems to be exhibited. A voting system must be on exhibition in the office of the election administrator of any county where the voting system is used and may be exhibited at other locations. The election administrator shall demonstrate the voting system to any inquiring elector.

13-17-211. Uniform procedures for using voting systems. (1) For each voting system approved under 13-17-101, the secretary of state shall adopt rules specifying the procedures to be uniformly applied in elections conducted with the voting system.

(2) The rules must, at a minimum, specify procedures that address the following:

- (a) performance testing and certification under 13-17-212;
- (b) how electors ensure the proper disposition of a ballot pursuant to 13-13-117(2);
- (c) the procedures to be followed if the comparison under 13-15-206(2)(b) reveals discrepancies;
- (d) how to operate and test the system during counts; and
- (e) the security measures necessary to secure the voting system before, during, and after an election.

13-17-212. Performance testing and certification of voting systems prior to election. (1) No more than 30 days prior to an election in which a voting system is used, the election administrator shall publicly test and certify that the system is performing properly.

(2) The secretary of state shall ensure that at least 10% of each type of voting system in the state has been randomly tested and certified at least once every calendar year.

(3) The provisions of this section must be implemented according to rules adopted by the secretary of state pursuant to 13-17-211.

Part 3 Voting Procedure

13-17-306. Use of separate paper ballots for voting on certain candidates or issues. Subject to 13-12-202, whenever a voting system does not allow adequate space for all candidates for all offices or for all ballot issues, separate paper ballots may be used for some or all offices or ballot issues if written authorization is given to the election administrator by the secretary of state.

Part 5 Postelection Audit

13-17-501. Short title. This part may be cited as the "Postelection Audit Act".

13-17-502. Definitions. As used in this part, the following definitions apply:

(1) "Computer software expert" means a person who has obtained a bachelor of science degree in computer science with expertise in software engineering and who is not affiliated with an election software vendor.

(2) "County audit committee" means the committee that conducts a random-sample audit in a county.

(3) "Vote-counting machine" means an individual piece of equipment used to automatically tabulate votes.

13-17-503. Random-sample audit of vote-counting machines required — rulemaking authority.

(1) After unofficial results are available to the public in a federal election, but before the official canvass by the county board of canvassers, the county audit committee shall conduct a random-sample audit of vote-counting machines.

(2) The random-sample audit may not include a ballot that a vote-counting machine was unable to process and that was not resolved pursuant to 13-15-206 because the ballot:

- (a) appeared to have at least one overvote;
 - (b) appeared to be blank;
 - (c) was in a condition that prevented its processing by a vote-counting machine; or
 - (d) contained a mark, error, or omission that prevented its processing by a vote-counting machine.
- (3) Except as provided in subsections (4) and (5), the random-sample audit must include:
- (a) at least 5% of the precincts in each county or a minimum of one precinct in each county, whichever is greater; and
 - (b) an election for:
 - (i) one statewide office race, if any;
 - (ii) one federal office race;
 - (iii) one legislative office race; and
 - (iv) one statewide ballot issue if a statewide ballot issue was on the ballot.
- (4) The audit may not include:
- (a) a retention election for a judicial candidate; or
 - (b) a race in which a candidate was unopposed.
- (5) A county is exempt from the postelection random-sample audit requirements if:
- (a) the county does not use a vote-counting machine; or
 - (b) the county's unofficial final vote totals for a ballot issue or for any race, except precinct committee representative, show a tie vote or a vote within the margins allowed by Title 13, chapter 16, part 2, for a recount without a court order. A county meeting the requirements of this subsection (5)(b) shall notify the secretary of state as soon as practicable.
- (6) The secretary of state shall adopt rules to implement the provisions of this part, including but not limited to rules for:
- (a) the process to be used for selecting precincts, races, and ballot issues for the random-sample audit; and
 - (b) the manner in which the random-sample audit of vote-counting machines will be conducted pursuant to the procedures established in this part.

13-17-504. County audit committee — membership — oath required. (1) Prior to each federal election, the county governing body shall appoint at least three individuals to serve on the county audit committee from a list of county employees and county residents who have offered to serve on the committee.

- (2) The county audit committee may not include:
 - (a) a person who served as an election judge in the election;
 - (b) a person employed by the vendor who supplied the vote-counting machines subject to the audit; or
 - (c) a person who has performed maintenance on the vote-counting machines subject to the audit.
- (3) Before beginning service, the audit committee members shall take and subscribe the official oath prescribed by the Montana constitution. The audit committee members may administer the oath to each other.
- (4) The county election administrator shall serve as the secretary to the county audit committee.

13-17-505. Selection process for random-sample audit. (1) No sooner than 7 days after the election and no later than 9 days after the election, the state board of canvassers, pursuant to 13-17-503 and as established by rule, shall randomly select:

- (a) the races and ballot issue to be audited;
- (b) the precincts to be audited in each county; and

(c) three additional precincts in each county that would be audited if a discrepancy in vote tallies occurs and results in the need to audit additional precincts pursuant to 13-17-507.

(2) The selection process must be open to the public.

(3) After selecting the precincts, races, and ballot issue for the random-sample audit, the state board of canvassers shall direct the secretary of state to:

(a) notify each county election administrator of the selections; and

(b) make a list of the selections available electronically.

13-17-506. Conduct of random-sample audit. (1) The random-sample audit must be completed at least 1 day before the official canvass by the county board of canvassers.

(2) The county audit committee shall manually count the votes for the random-sample audit as follows:

(a) One member shall read the ballot while the remaining members shall each record on an official tally sheet the number of valid votes cast for each of the selected offices and the ballot issue.

(b) (i) After the vote is complete, the tally sheets of the members recording the votes must be compared.

(ii) If the tallies match, the county audit committee shall compare the manual count for the selected offices and the ballot issue to the vote-counting machine count for the selected offices and the ballot issue.

(iii) If the tallies do not match, the count must be conducted again as provided in this subsection (2) until the tallies match.

(c) (i) If the manual count and the vote-counting machine totals match, the county audit committee shall certify the results to the county election administrator and the secretary of state.

(ii) If the manual count and the vote-counting machine totals do not match, the county audit committee shall follow the procedures established in 13-17-507.

(3) The audit process must be public.

13-17-508. Reimbursement of county costs. (1) Except as provided in subsection (2), the secretary of state shall reimburse each county for any costs incurred in implementing the provisions of this part.

(2) A vendor who supplies a vote-counting machine that was purchased after October 1, 2009, and that fails an audit due to software or machine defects or vendor employee error shall pay the costs incurred for the audit of vote-counting machines in the affected county. The provisions of this subsection must be reflected in the contract for the purchase of vote-counting machines.

13-17-509. Vote-counting machine maintenance — examination. (1) Upgrades, patches, fixes, or alterations may not be applied to any vote-counting machine during the 30 days following a federal election.

(2) If a vote-counting machine fails an audit pursuant to 13-17-507, the vote-counting machine is subject to examination by a computer software expert in consultation with a voting system vendor.

ADMINISTRATIVE RULES
ADOPTED BY SECRETARY OF STATE

Rule No	Rule Title
<u>44.3.1701</u>	EXAMINATION OF VOTING MACHINES AND DEVICES
<u>44.3.1702</u>	CONDUCT OF EXAMINATION
<u>44.3.1703</u>	CRITERIA OF CONSTRUCTION
<u>44.3.1704</u>	CRITERIA OF EXAMINATION
<u>44.3.1705</u>	COSTS OF EXAMINATION
<u>44.3.1706</u>	NOTIFICATION TO APPLICANT
<u>44.3.1707</u>	APPEAL FROM DISAPPROVAL
<u>44.3.1708</u>	WAIVER OF CONDITIONS
<u>44.3.1709</u>	EXPERIMENTAL USE OF VOTING MACHINES OR DEVICES
<u>44.3.1710</u>	EXTENSION OF PREVIOUS APPROVAL OF VOTING MACHINES OR DEVICES
<u>44.3.1711</u>	BENCHMARK PERFORMANCE STANDARD FOR VOTING SYSTEMS PRIOR TO CERTIFICATION
<u>44.3.1712</u>	PERFORMANCE CERTIFICATION OF VOTING SYSTEMS PRIOR TO ELECTION
<u>44.3.1713</u>	UNIFORM PROCEDURES FOR USING VOTING SYSTEMS
<u>44.3.1714</u>	HANDLING VOTING MACHINE ERROR DURING COUNT
<u>44.3.1715</u>	METHOD OF CORRECTION OF BALLOT
<u>44.3.1716</u>	REJECTED BALLOTS
<u>44.3.1717</u>	SEALING BALLOTS AND VOTING SYSTEMS
<u>44.3.1718</u>	DEFINITIONS
<u>44.3.1719</u>	SELECTION PROCESS FOR RANDOM-SAMPLE AUDIT
<u>44.3.1720</u>	REPORTING PROCESS FOR RANDOM-SAMPLE AUDIT
<u>44.3.2408</u>	BALLOT FORM AND UNIFORMITY

44.3.1701 EXAMINATION OF VOTING MACHINES AND DEVICES

(1) The secretary of state is empowered under [13-17-101](#), MCA, to approve voting machines and devices.

(2) Unless the context clearly requires otherwise, the following terms shall have the following meanings:

(a) "Applicant" means any person, county governing body, or business entity which has applied for inspection of a voting machine or device under these rules.

(b) "Automatic tabulating equipment" means and includes apparatus necessary to automatically examine and count votes as designated on ballots and data processing machines which can be used for counting ballots and tabulating results.

(c) "Ballot" includes paper ballots.

(d) "Device" means an apparatus used for voting by the process of marking of a ballot. Ballots are counted using automatic tabulating equipment.

(e) "Engineering change order" means a change to the voting system that does not affect the current federal certification, form, fit, or function of the voting system.

(f) "Examiners" means any or all persons having authority to conduct the examination under [ARM 44.3.1701](#).

(g) "Interested party" includes all persons charged with any duty under the election laws of Montana, any manufacturer of or dealer in mechanical voting machines, voting devices or components thereof and agents of such manufacturer or dealer and any person otherwise affected by these rules.

(h) "Marking device" means any approved device for marking a paper ballot with ink or other substance which will enable the ballot to be tabulated by means of automatic tabulating equipment.

(i) "System" includes a self-contained mechanical voting machine or an electronic voting device and the individual components of each.

(j) "Voting machine" means a mechanical apparatus on which to cast votes.

(3) Such examination shall be conducted by the office of secretary of state, who may choose at least two Montana electors to assist with the examination.

(4) The examination shall be held on a day to be agreed upon by the applicant and the secretary of state.

(5) The place of examination shall be in the city of Helena, county of Lewis and Clark, state of Montana, at such location as may be agreed upon by the applicant and the secretary of state.

(6) Examination of voting machines and devices shall be made only upon application to the secretary of state. Such application shall be in writing on the form prescribed by the secretary of state and shall contain the information prescribed by the secretary of state.

(7) No application may be submitted to the secretary of state later than 90 days prior to the date of the election at which the machines are proposed to be used.

44.3.1702 CONDUCT OF EXAMINATION

(1) The following materials shall be provided by the applicant at the place agreed upon for the examination:

(a) At least one fully operative system unit or set conforming to the description of the same contained in the application.

(b) At least one copy of any brochures, pamphlets, and descriptive or sales material of any kind intended for use in promoting the same for use of such system in Montana.

(c) Samples of any training aids supplied by the applicant for the use of election officials.

(d) Where applicable sample ballots suitable for use in the system substantially in the form required by Montana law for a primary and general election in a year in which a president of the United States of

America is to be elected. Such ballots for the general election sample shall also contain a ballot issue to be voted upon.

(e) Where applicable a set of programmed ballots having a known count for each office or ballot issue listed thereon, which count shall be declared before any test tabulation of said ballots is made.

(f) Copies of any other material required by law to be displayed at the polls, or useful for the instruction or information of electors at the polls.

(g) If not contained in other materials, data on the extent of use and length of use of the system being examined in other jurisdictions.

44.3.1703 CRITERIA OF CONSTRUCTION

(1) Voting machines or devices shall meet the following requirements:

(a) They shall permit and require an elector to vote in secret.

(b) They shall prevent an elector from voting for any candidate or upon any ballot issue more than once and is also prevented from voting on any office or ballot issue for which he is not entitled to vote.

(c) They shall permit an elector to secretly select the party for which he wishes to vote in a primary election and the machine or device will count only votes for the candidates of that party by the elector in the primary election.

(d) They shall permit an elector to vote a split ticket in a general election if he desires.

(e) They shall register and record every valid vote cast.

(f) They shall be constructed so that they cannot be tampered with for a fraudulent purpose.

(g) They shall also be constructed so that during the progress of the voting no individual can see or know the number of votes registered for any candidate or on any ballot issue.

(h) They shall allow write-in voting.

(i) They shall provide that the ballot may be rotated as provided in [13-13-205](#), MCA, without substantially impairing the efficiency or accuracy of the tabulation of such rotated ballots.

(j) The applicant shall guarantee to provide training and assistance to election officials included in each contract for purchase of a machine or device.

(k) They shall comply with all other requirements of the election laws, so far as they are applicable.

(2) Voting machines or devices shall be constructed of materials sufficiently durable to withstand normal wear and tear due to usage, storage and transportation. It is the intent of this rule that the system shall have a useful life of ten years or more without major mechanical or electronic failure due solely to normal use, storage and transportation. Applicant shall submit data pertinent to this rule, if available.

(3) Such system shall be fully guaranteed as to parts and workmanship for a period of not less than two years from date of purchase, and the manufacturer shall be prepared to provide maintenance and repair service for such system at a rate to be agreed upon by the manufacturer, dealer or agent of either and the purchasing entity.

(4) Each system or each component of any system shall remain operative and unimpaired in efficiency and accuracy in the physical and electrical environment normally found in polling places and other places used for election purposes, including places to which ballots are taken for purposes of tabulation.

(a) The system shall be so constructed as to operate in atmospheric temperatures ranging from 65 to 90 degrees Fahrenheit.

(b) The system shall be so constructed as to operate without being affected by variations in the voltage or amperage of the power supply normally found in places where it is to be used.

(c) Any system utilizing photoelectric or photosensitive components shall be so constructed that it will operate in the presence of light intensity on the order of that caused by the use of flashbulbs or other lighting, whether intermittent or continuous, used for photographic purposes.

(5) The system shall provide a mechanical or procedural means whereby an elector may cast a write-in vote for any person for any office, and whereby such elector shall be prevented from voting for another person for such office on the regular ballot.

(6) Automatic tabulating equipment shall provide a visible or audible signal to the operator thereof in the following cases.

(a) If a ballot cannot be tabulated by the system due to a physical defect in the ballot, the machine shall signal rejection of the ballot.

(b) If a ballot or part thereof has been overvoted because the elector has recorded vote intentions for a number of persons for an office in excess of the number he is entitled to vote for, the ballot tabulation program and hardware shall have the ability to so record and display a summary of the ballot overvote conditions.

(7) Where applicable no device shall be approved if the act of voting by an elector does not produce a visible effect upon the ballot by application of a visible substance to the ballot.

44.3.1704 CRITERIA OF EXAMINATION

(1) The examination of a mechanical voting machine shall be conducted by the examiner or examiners to ensure that the machine meets the criteria set out in ARM [44.3.1703](#)(1) as well as:

(a) It shall be determined that if levers or buttons of any description are used as the method of casting a ballot that such levers or buttons will produce a positive vote regardless if they are fully depressed or not.

(b) If the system includes its own voting booth or compartment provision shall be made for a larger voting area which will accommodate a wheelchair and/or persons named to assist a handicapped elector.

(c) It shall be determined, in the judgment of the examiners whether or not the system complies with all other applicable requirements of the election laws.

(2) The examination of a voting device shall be conducted by the examiner or examiners as follows:

(a) It shall be determined that the criteria in ARM [44.3.1704](#) are met.

(b) By tabulation of the preprogrammed materials supplied under ARM [44.3.1702](#)(1)(e), it shall be determined whether the tabulating apparatus will count accurately on no less than two nor more than five tabulations of the materials so supplied. Any difference in count on any tabulation of preprogrammed material shall be deemed a material cause for rejection of the system.

(c) A set of sample ballots, not less than 25 nor more than 100 in number, shall be marked or pierced at the site of the examination by a person present other than the applicant or his agent. Such set shall be tabulated no less than two nor more than five times. The failure of any subsequent tabulation to agree completely with the initial tabulation shall be deemed a material cause for rejection of the system.

(d) At least two of the ballots marked or pierced under ARM [44.3.1703](#)(1)(b) shall contain a vote for one office in excess of the number of votes which an elector would be entitled to cast for such office. Failure of the machine to reject such ballot shall be deemed a material cause for rejection of the system.

(e) The manufacturer or his agent shall demonstrate the extent to which bending, folding or otherwise abusing a ballot or ballot card is possible without causing said ballot or ballot card to be unusable in the tabulating equipment. If more than one per cent of the ballots marked or pierced at the site of the examination shall be rejected by the tabulating equipment for such cause, such rejection shall be deemed a material cause for rejection of the system.

(f) If the system being examined uses a paper ballot which is to be marked with ink or other visible substance, the manufacturer or his agent shall demonstrate the extent to which a mark may fail to cover the voting space, or fail to be in ideal position before the vote shall fail to be counted by the tabulating equipment.

(g) Failure of the tabulating equipment to count a vote cast because of the condition of the mark made thereon shall be deemed a material cause for rejection of the system, if, in the opinion of the examiners, such mark would have been counted for the person voted for if the ballots were manually tabulated.

(h) Engineering change orders considered to be *de minimis* changes to voting systems shall be reviewed and approved by the Secretary of State upon written application.

44.3.1706 NOTIFICATION TO APPLICANT

(1) Within 30 days after completion of such examination, the Secretary of State or the deputy or deputies shall prepare and file in the office a report of the findings with respect to the system examined.

(2) A copy of such report shall be forwarded to the applicant at the address shown in the application for such examination.

(3) If the report approves the system, the Secretary of State shall mail a copy of said report to each election administrator of the state of Montana.

44.3.1707 APPEAL FROM DISAPPROVAL

(1) If upon examination any system shall have been disapproved by the Secretary of State under these rules, the applicant may appeal by requesting reconsideration of the system so disapproved, under the following conditions:

(a) Such request for reconsideration shall be made within 60 days after applicant has been notified of the disapproval of the system presented for examination.

(b) Such request shall be in writing.

(c) Such request shall be limited to the grounds of disapproval as stated in the notification of the Secretary of State. The discovery or further explanation of advantages of the system not pertinent to the grounds upon which the system was disapproved shall not constitute an adequate cause for reconsideration.

(2) If the Secretary of State approves such request for reconsideration, he shall notify the applicant therefore in writing, and shall state the time and place fixed for reexamination of the system, if, in his opinion, reexamination is required. If reexamination is not required, he shall so state, and the matter of reconsideration may be consummated by mail, or by a hearing to be held at such time and place as the Secretary of State may fix. If a hearing is held, the Secretary of State shall make a full report of the same, shall file the same in his office and transmit a copy thereof to the applicant at the address stated in his application for reconsideration.

(3) If such reexamination, correspondence or hearing results in the approval of a system, the Secretary of State shall proceed to give notice of such approval in the manner provided in ARM [44.3.1706](#).

44.3.1708 WAIVER OF CONDITIONS

(1) The Secretary of State may vary the time and place of examination fixed by ARM [44.3.1701](#)(4) and (5) and may waive any informality in the form of application or procedure followed in examination, if, in his opinion, such informality does not substantially affect the validity of his conclusions with respect to the system examined.

44.3.1710 EXTENSION OF PREVIOUS APPROVAL OF VOTING MACHINES OR DEVICES

(1) Any system having been approved under rules previously promulgated by the Secretary of State under prior citations of law shall continue to have approval under the application of these rules without

reexamination. However, any contracts for purchase drawn after December 28, 1979, must contain the guarantees as provided in ARM [44.3.1703\(3\)](#).

44.3.1711 BENCHMARK PERFORMANCE STANDARD FOR VOTING SYSTEMS PRIOR TO CERTIFICATION

(1) The benchmark performance standard for voting systems approved under [13-17-101](#), MCA, is based on commonly accepted industry standards for readily available technologies. These standards shall at the time of certification conform to all applicable federal requirements, as well as state requirements listed in the Montana Code Annotated and Administrative Rules of Montana.

44.3.1712 PERFORMANCE CERTIFICATION OF VOTING SYSTEMS PRIOR TO ELECTION

(1) No more than 30 days prior to an election in which a voting system is used, the election administrator shall publicly test and certify that the system is performing properly.

(2) The Secretary of State shall ensure that at least 10% of all voting systems in the state, including each model of each type of voting system, have been randomly tested and certified at least once every calendar year. This rule shall be implemented through review by the Secretary of State of its prescribed voting system testing and certification forms completed by the county.

44.3.1713 UNIFORM PROCEDURES FOR USING VOTING SYSTEMS

(1) For each voting system approved under [13-17-101](#), MCA, the system must comply, as applicable, with the following procedures specified in the instruction manuals, user guides, and technical manuals provided by the manufacturer and distributor of the system, as well as the election judge handbook provided by the office of the Secretary of State (except in cases in which those materials conflict with state laws or rules, in which case the laws or rules shall apply):

- (a) performance certification under [13-17-212](#), MCA;
- (b) how electors ensure the proper disposition of a ballot pursuant to [13-13-117\(2\)](#), MCA;
- (c) the procedures to be followed if the comparison under [13-15-206\(2\)\(b\)](#), MCA, reveals discrepancies;
- (d) how to operate and test the system during counts or recounts;
- (e) the security measures necessary to secure the voting system before, during, and after an election, including security following a recount under [13-16-417](#), MCA; and
- (f) testing and certification of voting systems pursuant to [13-17-212](#), MCA, including a random test conducted by a county election administrator or designee of 5% of each type of voting systems, a minimum of one per county, on election day, to validate the accuracy of voted paper ballots with the voting system results.

44.3.1714 HANDLING VOTING MACHINE ERROR DURING COUNT

(1) During a count of paper ballots in which votes are being automatically tabulated by a voting machine, if the election administrator or counting board has reason to believe that the voting machine is not operating correctly, the count must be halted and the machine must be tested, as applicable, in accordance with the procedures specified in the instruction manuals, user guides, and technical manuals provided by the manufacturer of the voting system, as well as the election judge handbook provided by the office of the secretary of state, except in cases in which those materials conflict with state laws or rules, in which case the laws or rules shall apply.

(2) If the test does not show any errors, the count must proceed using the voting machine.

(3) If the test shows errors and the errors cannot be corrected or if a majority of the counting board agrees that the machine may not be functioning correctly:

(a) if no other tested voting machine is available, votes cast on paper ballots must be counted manually in accordance with [13-15-206](#), MCA; and

(b) the vote-counting machine involved in the discrepancy in that county may not be used in another election until it has been examined and tested by a computer software expert in consultation with a voting machine vendor and approved by the secretary of state.

44.3.1717 SEALING BALLOTS AND VOTING SYSTEMS

(1) When a recount of paper ballots that was conducted using a voting system has been finished, ballots must again be sealed in the same package or envelope (unless the package or envelope is unusable), in the presence of the election administrator and the county recount board and must be delivered to the election administrator for custody.

(2) All voting systems must be secured as provided in accordance with the procedures specified in the instruction manuals, user guides, and technical manuals provided by the manufacturer of the voting system, as well as the election judge handbook and testing and security procedures provided by the office of the Secretary of State, except in cases in which those materials conflict with state laws or rules, in which case the laws or rules shall apply. All such procedures must ensure to the greatest degree possible the security of the voting systems from intentional and unintentional misuse.

(3) All other materials used in the recount that are required to be sealed must be resealed in the same manner and delivered to the election administrator for custody.

44.3.1718 DEFINITIONS

(1) "Blind count" means that the members of the county audit board do not know the vote totals in the precinct(s) being audited prior to conducting the postelection audit.

(2) "Board" is defined as the state board of canvassers consisting of the attorney general, the state auditor, and the superintendent of public instruction.

44.3.1719 SELECTION PROCESS FOR RANDOM-SAMPLE AUDIT

(1) Within seven to nine days after a federal election, the Secretary of State shall call a public meeting of the board to randomly select the races, ballot issues, and precincts to be audited pursuant to the Postelection Audit Act. Such public meeting will be posted no later than five days prior to the meeting date on the Secretary of State's web site.

(2) A county exempt from the postelection audit requirements because it does not use a vote-counting machine or has a race that is within the margins of a recount pursuant to Title 13, chapter 16, part 2, MCA, shall notify the Secretary of State of its exemption no later than seven days after the election by submitting a notice for exemption on the form approved by the Secretary of State.

(3) Pursuant to [13-17-503](#), MCA, at least 5% of the precincts in each county, or a minimum of one precinct in a county, shall be audited, whichever is greater. The board shall utilize current official precinct information provided by the counties to the Secretary of State to determine the number of precincts to be audited per county. Three additional precincts in each county will be selected pursuant to [13-17-505](#), MCA, in case a discrepancy in vote tallies occurs that necessitates further auditing.

(4) To select the specific races and precincts to be audited, the board shall use ten-sided dice with numerals from 0 to 9 as the method of random selection. One, two, or three dice shall be used as specified below. The dice shall be red, white, and blue in color where red is the first number, white is the second number, and blue is the third number, if necessary.

(a) The precincts shall be numbered with consecutive numbers from 00 up to the actual number of precincts for counties having from 11 to 100 precincts, i.e., precinct 1 is numbered 01, precinct 2 is numbered 02 and so on until all the precincts in a county have been numbered. Precinct 100 will be numbered 00. For counties with 101 or more precincts, the precincts shall be numbered with consecutive numbers from 101 up to the actual number of precincts.

(b) One or two ten-sided dice shall be used to select one statewide office race, if any, one federal office race, one legislative office race, and one statewide ballot issue, if any, by assigning a number to each district or race based on its order of placement on the ballot.

(c) One ten-sided die shall be used to select the precinct to be audited for counties consisting of ten or less precincts, with 0 representing precinct 10.

(d) Two ten-sided dice shall be utilized to select the precinct or precincts to be audited for those counties consisting of 11 to 100 precincts.

(e) Three ten-sided dice shall be utilized to select the precincts to be audited for any counties consisting of more than 100 precincts.

(f) The board may decide to assign a number range of equal intervals to each precinct to reduce the number of dice throws needed, e.g., 0 – 2 = precinct 1, 3 – 5 = precinct 2, 6 – 8 = precinct 3, etc.

(5) The board shall determine the order in which board members will throw the dice. Board members will rotate dice throwing after each 30-minute interval. A ribbed tumbler and dice tray shall be utilized to accomplish the dice throw. The Secretary of State shall record the results on the prescribed form.

(6) Once the races and the precincts to be audited have been selected, the Secretary of State shall notify each county election administrator of the race and precinct selections and post the selections on the Secretary of State's web site.

(7) The Secretary of State in collaboration with the counties will provide guidance to the counties as to the method the counties will use to ensure all individual precinct ballots, including but not limited to each precinct's absentee ballots, are accounted for in a manner that will correlate to a specific vote-counting machine. The method will ensure that the postelection audit is a blind count.

44.3.1720 REPORTING PROCESS FOR RANDOM-SAMPLE AUDIT

(1) Once the county audit committee has performed the random-sample audit pursuant to the procedures specified in [13-17-503](#) and [13-17-504](#), MCA, the county election administrator shall notify the secretary of state of the results by submitting the information on a form approved by the secretary of state.

(2) The secretary of state shall post the results of the state board of canvassers' random-sample audit selections on its web site.

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.