

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of New)	NOTICE OF ADOPTION AND
Rules I through V pertaining to)	AMENDMENT
election security definitions, security)	
assessment requirements, security)	
awareness training requirements,)	
physical security requirements, and)	
additional election security)	
requirements; and the amendment of)	
ARM 44.3.1701 pertaining to)	
definitions related to the examination)	
of voting machines and devices)	

TO: All Concerned Persons

1. On April 5, 2022, the Secretary of State published MAR Notice No. 44-2-255 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 507 of the 2022 Montana Administrative Register, Issue Number 7. On May 13, 2022, the Secretary of State published a second notice pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 676 of the 2022 Montana Administrative Register, Issue Number 9.

2. On June 3, 2022, a public hearing was held on the proposed adoption and amendment of the above-stated rules.

3. The Secretary has thoroughly considered the relevant comments and testimony received. A summary of the comments received and the Secretary's responses are as follows:

COMMENT 1: Commenters expressed general support for MAR Notice No. 44-2-255.

RESPONSE 1: The Secretary appreciates the public's participation in this rulemaking process.

COMMENT 2: A commenter said that additional clarification is needed on the requirements for annual security assessments regarding the controls and timing.

RESPONSE 2: The proposal requires annual security assessments to be completed based on the NIST (National Institute of Standards and Technology) or CIS (Center for Internet Security) standards outlined in the proposal notice. The assessments shall be performed every year, where at least once every three years it be performed by an independent, third-party, and qualified assessor. When not performed by an

independent, third-party, qualified assessor, a county election office may perform a self-assessment based on the same standards.

COMMENT 3: A commenter suggested that in New Rule IV, the reference to video surveillance of rooms or areas where ballots are opened, processed, tabulated, or hand-counted be expanded to recommend video surveillance at any time a person or persons are in the room or other areas until they leave the room or other areas. The commenter also offered the alternative suggestion of recommending surveillance of those areas be 24 hours a day/7days a week.

RESPONSE 3: The proposed language recommends surveillance during the administration of elections. Expanding the requirement as suggested by the commenter extends beyond Secretary's authority.

COMMENT 4: A commenter suggested that the Secretary should provide in rule that the Secretary of State employs an Information Security Manager to ensure both election security and agency-wide security.

RESPONSE 4: The organizational structure of the Office of the Secretary of State is described in ARM 44.1.101.

COMMENT 5: A commenter noted that machines should not be on a network which would be necessary for them to talk to each other.

RESPONSE 5: In the proposal, NEW RULE V(1) indicates that "Any type of component that is used within a voting system as defined in 13-1-101, MCA, shall not be connected to a computer network at any time."

COMMENT 6: Two commenters indicated that they were supportive of the proposed changes but believe the draft rules do not go far enough and wished the agency included more rules on the general topic of election security.

RESPONSE 6: The Secretary acknowledges the commenters' desire for more security rules, but believes the proposal satisfies the legislative requirement as outlined in HB 530 (2021). This was affirmed in testimony during the rule hearing by Rep. McKamey, as sponsor of HB 530 (2021), who indicated she was satisfied that the rules meet the requirements and legislative intent.

4. The Secretary of State adopts New Rule I (44.3.2901), New Rule II (44.3.2902), New Rule III (44.3.2903), New Rule IV (44.3.2904), and New Rule V (44.3.2905) as proposed.

5. The Secretary of State amends ARM 44.3.1701 as proposed.

/s/ AUSTIN JAMES
Austin James
Rule Reviewer

/s/ CHRISTI JACOBSEN
Christi Jacobsen
Secretary of State

Dated this 14th day of June, 2022.