

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of NEW) NOTICE OF PUBLIC HEARING ON
RULE I pertaining to third-party) PROPOSED ADOPTION
testing of voting systems)

TO: All Concerned Persons

1. On October 16, 2023, at 11:00 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Office conference room, Room 260, State Capitol, Helena, Montana, to consider the proposed adoption of the above-stated rule.

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., October 9, 2023, to advise of the nature of the accommodation needed. Please contact Sue Ames, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-2807; fax (406) 444-3976; TDD/Montana Relay Service (406) 444-9068; or email sames@mt.gov.

3. The rule proposed to be adopted provides as follows:

NEW RULE I VOTING SYSTEM TESTING (1) Pursuant to 13-17-103, MCA, a voting system must be tested by a third-party tester to be free of any modems or other unauthorized external communication devices before its first use in an election and as requested by a county for voting systems in the county's possession and use. The third-party tester must not be an employee of the voting system manufacturer and must be trained and currently certified by the manufacturer as a maintenance technician for the voting system being tested. The voting system manufacturer must provide a current list of certified maintenance technicians to the Secretary of State's Office.

(2) The test referenced in (1) must be a physical examination of the voting system in which the hardware components of the voting system are compared to the diagram of the voting system retained and approved by the Secretary of State's Office.

(3) The third-party tester must provide a report of the test to the county election administrator and to the Secretary of State's Office on a form approved by the Secretary of State's Office. The test report must be maintained by the county election administrator according to the local government records retention schedule.

(4) A voting system that does not conform to the diagram retained and approved by the Secretary of State's Office must not be used for any election.

(5) The county election administrator must be present and ensure the chain of custody of the voting system is documented throughout the testing process.

(6) The county election administrator must ensure the voting system is performing properly before and after the test.

(7) As used in this rule, the term "employee" does not include an independent contractor, individuals hired by an independent contractor, or a subcontractor.

AUTH: 13-17-103, MCA

IMP: 13-17-103, MCA

REASONABLE NECESSITY: On April 19, 2023, the Governor of Montana signed into law House Bill (HB) 173. HB 173 required the Secretary of State to adopt rules defining approved third-party testers and the testing process for voting systems to validate manufacturers' certifications that voting systems are free of any modems or other unauthorized external communication devices.

The Office of the Secretary of State is proposing NEW RULE I to fulfill the requirements of the new law. NEW RULE I defines approved third-party testers by identifying the requirements a third-party tester must meet. It also proposes the testing process to allow voting systems to be disassembled, if applicable, and establishes a process to detect modems or other unauthorized communication devices by comparing to diagrams of authorized voting system components.

NEW RULE I is proposed to ensure test results are documented, and the county election administrator and the Secretary of State's Office are notified of test results. The proposed rule prohibits voting systems that fail the test from being used in any election to protect the security and integrity of the election process. The proposed rule also acknowledges that the chain of custody requirements apply during this new voting system test. It also requires county election administrators to verify the system is performing properly before and after the test to ensure the voting systems were not damaged as a result of the testing process.

4. With regard to the requirements of 2-4-302(1)(c), MCA, it has been determined that this proposed rule will not have a fiscal impact.

5. 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: Angela Nunn, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing angela.nunn@mt.gov, and must be received no later than 5:00 p.m., October 20, 2023.

6. Austin James, Secretary of State's Office, has been designated to preside over and conduct the hearing.

7. 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 may submit their request online at <https://sosmt.gov/arm/secretary-of-state-administrative-rules/> or submit a written request which includes the name and contact information of the person who wishes to receive notices. Written requests may be mailed or delivered to the Secretary of

State's Office, Administrative Rules Services, 1301 E. 6th Avenue, P.O. Box 202801, Helena, MT 59620-2801, or emailed to sosarm@mt.gov.

8. With regard to the bill sponsor contact requirements of 2-4-302, MCA, the primary bill sponsor, Representative David Bedey, was contacted by phone on August 10, 2023, and by email on September 1, 2023.

9. With regard to the requirements of 2-4-111, MCA, the Secretary of State has determined that the adoption of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Austin Markus James
Austin Markus James
Rule Reviewer

/s/ Christi Jacobsen
Christi Jacobsen
Secretary of State

Dated this 12th day of September, 2023.