

ALABAMA ELECTRONIC VOTING COMMITTEE
ADMINISTRATIVE CODE

CHAPTER 307-X-1
PROCEDURES FOR ELECTRONIC VOTE COUNTING SYSTEMS

TABLE OF CONTENTS

307-X-1-.01	Definitions
307-X-1-.02	Application Of Law
307-X-1-.03	Application To Municipal Elections
307-X-1-.04	Testing Of Precinct Ballot Counters
307-X-1-.05	Testing Of Central Ballot Counters
307-X-1-.06	Ballots
307-X-1-.07	Custody And Transportation Of Equipment
307-X-1-.08	Voters Per Precinct
307-X-1-.09	Provision Of Voting Stations
307-X-1-.10	Appointment And Duties Of Poll Officials
307-X-1-.11	Opening The Polls
307-X-1-.12	Ballot Accounting Certificates
307-X-1-.13	Number Of Voters In Polling Place
307-X-1-.14	Spoiled Ballots
307-X-1-.15	Challenged Ballots
307-X-1-.16	Write-In Votes
307-X-1-.17	Counting Of Votes
307-X-1-.18	Certificate Of Results
307-X-1-.19	Disposition Of Forms
307-X-1-.20	Retest
307-X-1-.21	Recount
307-X-1-.22	Absentee Voting
307-X-1-.23	Direct Recording Electronic Voting Devices

307-X-1-.01 Definitions. Unless otherwise clearly indicated the following terms shall be given the following interpretations.

(1) **BALLOT CONFIGURATION:** The particular combination and arrangement of offices, candidates and questions for a precinct or subdivision thereof.

(2) **BALLOT LABEL:** A card, paper, booklet, or other material that contains the names of the offices and candidates and statements or questions to be voted on.

(3) **CENTRAL BALLOT COUNTER:** A marksense ballot counter that reads and tabulates marksense ballots at a central location to which ballots are transported after the polls close. There may be more than one central counter in a county.

(4) **COMMITTEE:** The Alabama Electronic Voting Committee, established by Act 83-200.

(5) **DIRECT RECORDING ELECTRONIC VOTING DEVICE:** An electronic device that records and tabulates electronic ballots.

(6) **ELECTRONIC BALLOT:** A ballot that utilizes electronic media or computerized systems for presenting the names of the offices and candidates and statements of questions to be voted on and for recording votes.

(7) **HEADER CARD:** A card or ballot which is coded to indicate to a central counter the precinct identity of the marksense ballots that follow immediately.

(8) **MARKSENSE BALLOT:** A machine-readable ballot which utilizes paper for presenting the names of the offices and candidates and statements of questions to be voted and on which the voter marks his or her choices in designated voting response locations.

(9) **MARKSENSE BALLOT COUNTER:** An electronic vote counting device that reads and tabulates marksense ballots.

(10) **MEMORY PACK:** A device capable of storing electronically the totals of a precinct ballot counter.

(11) **MEMORY PACK TABULATOR:** A device capable of reading precinct returns from memory packs and totaling these returns for the county and other electoral districts.

(12) **OVER-VOTE:** An attempt to vote for more than the allowed number of candidates for one office.

(13) **PRECINCT:** The smallest unit of the electoral system. As used in these rules the term refers to a single ballot counter or ballot box where voters cast their ballots. For example, if three ballot counters and their attendant officials are housed in the same building and the list of registered voters is divided geographically or alphabetically so that each voter is assigned to a single counter, then there are three separate precincts voting in the same building. However, where voting centers have been adopted, more than one precinct counter can be used in the same precinct.

(14) PRECINCT BALLOT COUNTER: A marksense ballot counter that reads and tabulates marksense ballots at the precinct where they are cast.

(15) PRIVACY BOOTH: A stand used to provide privacy for voters in completing their ballots.

(16) VOTING CENTER: An arrangement authorized by local legislation whereby multiple voting machines may be used in a single precinct.

(17) VOTE RECORDER: A device into which a ballot card is inserted and which is used by the voter to punch holes in the card for the purpose of recording votes.

(18) VOTING STATION: A table, booth, or device that permits a voter to complete a ballot in privacy.

Author: Charles E. Grainger, Jr.

Statutory Authority: Code of Ala. 1975, §17-24-7(b).

History: **New Rule:** Filed February 10, 1998; effective March 17, 1998. **Amended:** Filed February 7, 2002; effective March 14, 2002.

307-X-1-.02 Application Of Law. Except as provided in these rules, the use of marksense ballots in all elections shall be governed by the law governing the use of paper ballots and the use of direct recording electronic voting devices shall be governed by the law governing voting machines including, where local legislation permits, the use of voting centers.

Author: Charles E. Grainger, Jr.

Statutory Authority: Code of Ala. 1975, §17-24-7(b).

History: **New Rule:** Filed February 10, 1998; effective March 17, 1998. **Amended:** Filed February 7, 2002; effective March 14, 2002.

307-X-1-.03 Application To Municipal Elections. To the extent practicable, these rules shall apply in all municipal elections that are conducted using direct recording electronic voting devices or marksense ballot counting systems. The duties assigned in these rules to a state or county election official shall be performed by the corresponding municipal official. Where there is no corresponding municipal official, these duties shall be performed by the municipal clerk or other election official where the clerk is ineligible to perform these duties. Where these rules refer to a statutory provision or Act that

conflicts with a statutory provision or Act specifically applicable in municipal elections, the provision governing municipal elections shall prevail. For purposes of municipal elections, references in these rules to the county governing body shall mean the municipal governing body.

Author: Charles E. Grainger, Jr.

Statutory Authority: Code of Ala. 1975, §17-24-7(b).

History: **New Rule:** Filed February 10, 1998; effective March 17, 1998. **Amended:** Filed February 7, 2002; effective March 14, 2002.

307-X-1-.04 Testing Of Precinct Ballot Counters.

(1) The probate judge shall have each precinct ballot counter tested to ascertain that it will accurately count the votes cast for all official and all measures. Each counter shall be publicly tested before each election in which it is to be used. The date of the public test shall be as close as is practical to the date of the election and not more than fourteen (14) days [required by §17-24-9] before the election. Public notice of the time and place of the test shall be given.

(2) Test ballots are to be marked as such and shall be marked so that each candidate and each position on each amendment or other proposition shall receive at least two (2) votes. There shall be at least one over-vote in each race. In general elections, some of the ballots shall be voted straight ticket and others split ticket; and there shall be at least one write-in vote for each contested office. To facilitate the testing of precinct counters, duplicate sets of test ballots may be prepared. These duplicate test ballots may be validated either by hand counting or by counting on a piece of equipment that has correctly tabulated the original test ballots. The test ballots shall be hand counted and the results recorded and retained.

(3) At the time appointed for the public test, the probate judge and the county chairman of each party having candidates in the election, or their authorized representatives, shall meet and shall collectively prepare a sufficient number of test ballots. Party chairman may choose to waive their right to mark ballots and accept in lieu thereof ballots marked by the Probate Judge or his or her designee. Each piece of equipment shall be tested using the test ballots, and the results shall be compared with the record of the hand count. The manufacturer's prescribed test procedure may be substituted for the procedure outlined in this paragraph upon written approval by the Electronic Voting Committee.

(4) As an alternative to the public testing of all precinct counters, the following procedure may be used. The probate judge or his designee shall test each counter prior to the public test and shall see that the cause of any discrepancies are corrected. Representatives of candidates and parties participating in the election may attend this test. The test materials and printed output of this test shall be attached to the counters, which shall subsequently be assembled for the public test. At the public test a sample of counters shall be selected for retesting by drawing lots. At least one counter shall be selected and tested for each ballot configuration. Each candidate in a primary and each party in a general election may select an additional machine representing each ballot type for public testing. If any precinct counter fails to produce a completely accurate count, all counters using the same ballot configuration shall be tested.

(5) The causes of any discrepancies shall be corrected before the equipment is sealed and certified ready for the election. Immediately after each piece of equipment has correctly tabulated the test ballots, the operator shall clear the machine, setting all counters to zero and making the machine ready for use on election day. Then the equipment shall be sealed by the probate judge or his representative and certified ready for use.

(6) Where memory packs and memory pack tabulators are used, these devices shall be tested along with the precinct counters. The data from each memory pack shall be read into the tabulator, and the total shall be compared with a total that is hand tabulated from the printed output of the precinct counters for at least one countywide office, which is to be selected at the time of the test by a random procedure. Candidates for other offices, or their representatives, shall be permitted to audit the test totals for their offices if they so desire. The causes of any discrepancies shall be corrected before the equipment is sealed and certified ready for use. After the test, all test materials (including the results of the hand count, the test ballots, and the printed output from each counter) shall be sealed in a box or envelope and given to the sheriff to be maintained unopened for use in the event of contests.

(7) All proceedings of the public test, from the beginning of the test to the conclusion of the same, shall be open to the public.

Author: Charles E. Grainger, Jr.

Statutory Authority: Code of Ala. 1975, §17-24-7(b).

History: New Rule: Filed February 10, 1998; effective March 17, 1998. **Amended:** Filed February 7, 2002; effective March 14, 2002.

307-X-1-.05 Testing Of Central Ballot Counters. Each central ballot counter shall be tested in the same manner as required for precinct counters except that there shall be a set of test ballots, together with any necessary header cards for each ballot configuration to be voted on in the county or section of the county to which the central counter is assigned. In addition to the pre-election test prescribed for precinct counters, all central ballot counters will be tested on election day before and after the ballots from the precincts are counted. The tests on election day shall be conducted by the poll officials assigned to the central counter using the same test ballots that were used by the probate judge in the pre-election test.

Author: Charles E. Grainger, Jr.

Statutory Authority: Code of Ala. 1975, §17-24-7(b).

History: New Rule: Filed February 10, 1998; effective March 17 1998.

307-X-1-.06 Ballots.

(1) Marksense ballots shall, so far as practicable, be in the same order of arrangement as provided by Sections 17-8-4 and 17-8-5 for paper ballots, except that they shall be of the size and design required by the marksense ballot counters and may be printed upon one or more separate pages or cards. Marksense ballots shall not contain the square for the voters' numbers as provided in Sections 17-8-13 and 17-8-35, and seals shall not be provided for each ballot. Marksense ballots shall be manufactured with one detachable stub and numbered sequentially within each county with the sequence number printed on the stub but not on the ballot itself. There shall be printed on each marksense absentee and precinct ballot (both for precinct count and central count ballots) the ballot style number. This ballot style number shall represent the political race makeup of the ballot.

(2) In primary elections, constitutional amendments may be printed on party ballots, provided that sufficient ballots containing only the constitutional amendments are available for these voters who do not wish to sign the pledge for a party ballot.

(3) Secrecy envelopes or folders shall be provided in sufficient quantity for use by voters in transporting their completed ballots from the voting stations to the precinct counter or ballot box.

Author: Charles E. Grainger, Jr.

Statutory Authority: Code of Ala., 1975, §17-24-7(b).

History: **New Rule:** Filed February 10, 1998; Effective March 17, 1998. **Amended:** Filed February 7, 2002; effective March 14, 2002.

307-X-1-.07 Custody And Transportation Of Equipment. Sections 17-9-36 and 17-9-37, which provide for the custody and transportation of voting machines, shall apply to marksense ballot counters as well. In addition to the custodian now authorized by law, a county may employ electronic voting specialists to serve as troubleshooters during elections. These persons are to be trained in the operation of electronic voting equipment and in these procedures. They may be sent to assist in any precinct, but they shall not assume the title or authority of the regular poll workers assigned to a precinct.

Author: Charles E. Grainger, Jr.

Statutory Authority: Code of Ala. 1975, §17-24-7(b).

History: **New Rule:** Filed February 10, 1998; effective March 17, 1998. **Amended:** Filed February 7, 2002; effective March 14, 2002.

307-X-1-.08 Voters Per Precinct. In assigning voters to voting equipment as provided by Sections 17-5A-3 through 17-5A-6, the county commission shall not be bound by the limits of 300 voters per ballot box or 600 voters per voting machine. The county commission shall provide sufficient precinct counters, or ballot boxes where central counters are used, to ensure that all qualified voters shall be given an opportunity to vote without undue delay. There shall be at least one precinct counter, or ballot box where central counters are used, for each 2400 expected voters or fraction thereof. The number of expected voters shall be the largest number of votes cast in that precinct during the last four years. If the manufacturer's recommended maximum number of ballots is less than 2400, then that recommended number shall be used to determine the number of counters.

Author: Charles E. Grainger, Jr.

Statutory Authority: Code of Ala. 1975, §17-24-7(b).

History: **New Rule:** Filed February 10, 1998; effective March 17, 1998.

307-X-1-.09 Provision Of Voting Stations. The county commission shall provide sufficient voting stations so that each voter shall be given the opportunity to vote in privacy without undue delay. At no time shall the number of voters permitted in the voting area exceed the number of private voting stations available, unless the voter chooses to vote without utilizing a private voting station.

Author: Charles E. Grainger, Jr.

Statutory Authority: Code of Ala. 1975, §17-24-7(b).

History: **New Rule:** Filed February 10, 1998; effective March 17, 1998. **Amended:** Filed February 7, 2002; effective March 14, 2002.

307-X-1-.10 Appointment And Duties Of Poll Officials.

(1) The poll officials to be appointed in accordance with Section 17-6-1 shall be at least one inspector and three clerks. The inspector shall be in charge of the precinct, shall serve as official challenger in accordance with Section 17-12-2, and shall serve as precinct returning officer in accordance with Section 17-6-1.

(2) The registration list clerk shall check the name of voters against the list of registered voters and mark off the names of those who vote in order to prevent double voting. If any persons whose names does not appear on the list of registered voters are permitted to vote only by means of a certificate as provided in Sections 17-4-127 and 17-16-23, or by means of a challenged ballot as provided in Chapter 17-12 and Sections 17-16-23 and 17-16-24, the registration list clerk shall legibly print their names and addresses on the list of registered voters, mark through the names that these persons have voted, and record by the names the means by which they voted, i.e. certificate (with source and date) or challenged ballots.

(3) The poll list clerk shall ensure that each voter signs the poll list as provided in Sections 17-7-15 and 17-16-14. The second poll list provided for by Sections 17-8-34 and 17-9-23 is not mandatory. However, if the voter's signature is illegible, a clerk shall print the voter's name on the same or a duplicate list so that the signature can be identified. The poll list clerk shall give a marksense ballot to the voter, being sure that the stub remains attached to the ballot pad. The ballots shall be given out in sequence beginning with the lowest numbered ballot.

(4) Upon the request of a voter, the ballot clerk shall assist the voter as necessary to deposit the ballot in the precinct ballot counter or, where central counters are used, in the ballot box, taking care to preserve the secrecy of the ballot box.

(5) A county may employ additional poll officials, as necessary to serve at any precincts and at a central ballot counter or memory pack tabulator where these are used. These additional poll officials shall be appointed in the same manner and serve under the same conditions as the poll officials named in this section.

Author: Charles E. Grainger, Jr.

Statutory Authority: Code of Ala. 1975, §17-24-7(b).

History: **New Rule:** Filed February 10, 1998; effective March 17, 1998. **Amended:** Filed February 7, 2002; effective March 14, 2002.

307-X-1-.11 Opening The Polls.

(1) All poll officials shall report to the voting place at least 30 minutes before the polls open. Where precinct ballot counters are used, each counter must be tested in accordance with the manufacturer's instructions to ensure that all vote counters are set at zero and to prepare the equipment for voting. The test shall be performed in the presence of two watchers of opposite interests, if they are present. Any error must be reported to the custodian and no vote shall be tabulated on the equipment until it is repaired or a substitute is provided. A malfunction of a precinct counter shall not prevent the opening of the polls, and the receipt of ballots shall proceed using the procedure described under "equipment failure" below. When the test has been satisfactorily completed, the inspector, the ballot clerk, and the watchers, if any are present, shall sign a certificate to that effect.

(2) Where vote recorders are used, the poll officials shall compare the ballot pages of each recorder with a sample ballot for that precinct to determine that they agree and shall also vote every position of a specially marked demonstration ballot and compare the punches with the pages of the recorder to determine that they agree. No recorder may be used in a precinct until it has been so verified.

(3) Where central ballot counters are used, the Judge of Probate, Sheriff, and Circuit Clerk are to inspect the ballot boxes to be used in the election to determine that they are

empty. They then shall lock and seal the ballot boxes prior to the boxes being issued to the Inspectors of the respective precincts. The locks used shall be the type that utilizes a key or combination, and the seals used may be plastic, metal, or other material; however they shall be numbered. The design of the ballot box should enable the lock to be placed on the portion of the ballot box which would cause no contents to be removed without removing the lock. The numbered seal is placed on the insertion door of the ballot box whereby the numbered seal would have to be removed prior to any ballot being placed into the ballot box. The locking and sealing of the ballot boxes shall be done in public and the sheriff shall give proper notification. Also present at the locking and sealing of the ballot boxes may be a representative of any political party who has a candidate whose name is contained on the ballot of the election which is to be held, and any other witnesses that may be present. The Judge of Probate, Sheriff, and Circuit Clerk shall prepare a statement which certifies that the ballot boxes were empty, locked, and sealed prior to the election, and prior to the ballot box being delivered to the Inspector of the respective precincts. This statement shall also list the date, time, and place of the locking and sealing, and shall have included the seal numbers imprinted on the seals which are placed on the ballot boxes. The original copy of this statement shall be made part of the permanent record of election file and kept on file with the Judge of Probate. The duplicate copy of this statement shall be filed with the Sheriff.

(4) Prior to opening the polls, the Inspector of the precinct along with one other election official, shall remove the numbered seal from the insertion portion of the ballot box and verify that the ballot box was empty. If for any reason the ballot box seal has been broken or the ballot box contains any material, the Inspector shall immediately call the Sheriff, prior to the opening of the polls. The numbered seal that has been removed from the insertion portion of the ballot box shall be placed in an envelope and the "Ballot Box Inspection Report" shall be completed. (This form shall state that the ballot box was empty prior to the polls being opened and be signed by the Inspector and the other polling officials of the respective precinct.) Under no circumstances shall the ballot box be opened at the precinct.

Author: Charles E. Grainger, Jr.

Statutory Authority: Code of Ala. 1975, §17-24-7(b).

History: **New Rule:** Filed February 10, 1998; Effective March 17 1998. **Amended:** Filed February 7, 2002; effective March 14, 2002.

307-X-1-.12 Ballot Accounting Certificates.

(1) As soon as the marksense ballots are issued to a precinct, the issuing authority, or his representative, and the inspector shall complete and sign the following statement:

"Marksense ballots numbered sequentially from _____ (lowest numbered ballot) through _____ (highest numbered ballot) were issued to _____ (name of precinct) at _____ (time) on _____ (date)."

(2) Immediately after the last vote has been cast, the poll officials shall complete the following statement:

"Total number of unused ballots _____
Number of spoiled ballots _____
Number of votes from public counter of machine (precinct counter only) _____
Number of marksense ballots voted _____ (central counters only)"

Author: Charles E. Grainger, Jr.

Statutory Authority: Code of Ala. 1975, §17-24-7(b).

History: **New Rule:** Filed February 10, 1998; effective March 17, 1998. **Amended:** Filed February 7, 2002; effective March 14, 2002.

307-X-1-.13 Number Of Voters In Polling Place. The limit of ten electors per polling place prescribed by Section 17-8-29 shall not apply where either marksense ballot counters or direct recording electronic voting equipment are used. In precincts utilizing marksense ballot counting systems, at no time shall the number of voters permitted in the voting area exceed the number of private voting stations available unless the voter chooses to vote without utilizing the private voting stations.

Author: Charles E. Grainger, Jr.

Statutory Authority: Code of Ala. 1975, §17-24-7(b).

History: **New Rule:** Filed February 10, 1998; effective March 17, 1998. **Amended:** Filed February 7, 2002; effective March 14, 2002.

307-X-1-.14 Spoiled Ballots. Spoiled ballots shall be retained in a separate container.

Author: Charles E. Grainger, Jr.

Statutory Authority: Code of Ala. 1975, §17-24-7(b).

History: New Rule: Filed February 10, 1998; effective March 17, 1998.

307-X-1-.15 Challenged Ballots.

(1) The procedure for challenging voters shall be the same as prescribed in Chapter 17-12 and Sections 17-16-23 and 17-16-24. After the challenged voter has signed the poll list, the poll list clerk shall: take a regular marksense ballot, write on it the number adjacent to the voter's name on the poll list, disable the ballot so that it cannot be counted electronically, and give it to the challenged voter. A challenged ballot may also be cast on a paper ballot as now prescribed by law. When the challenged voter has completed the ballot, it shall be deposited in a separate box or envelope maintained for that purpose by the ballot clerk. In central count systems, challenged ballots shall be counted by hand after the central count poll officials at the central count location have been closed the polls. In precinct count systems, challenged ballots shall be counted by hand by the precinct poll officials at the precincts and the results shall be handwritten on the tape printed by the precinct ballot counter which contains the totals.

(2) Where multiple poll lists are used in a voting center, a separate challenged voters' poll list shall be used so that each number can be associated with only one name.

Author: Charles E. Grainger, Jr.

Statutory Authority: Code of Ala. 1975, §17-24-7(b).

History: New Rule: Filed February 10, 1998; effective March 17, 1998. **Amended:** Filed February 7, 2002; effective March 14, 2002.

307-X-1-.16 Write-In Votes. Write-in votes shall be permitted only in non-municipal general elections. The ballot must be constructed so that the voter can mark or punch a write-in vote for each office in the same manner that votes are registered for regular candidates. In order to cast a valid write-in vote, the voter must: (1) write the name on the ballot or secrecy envelope and (2) register the vote by a mark or punch in the space designated for that office. A write-in shall not be counted if the vote is not registered as provided above. Over-votes caused by write-ins shall be treated in the following manner. If a voter registers a vote for a name on the ballot and then writes in another name for the same office but fails to register the

write-in vote, the ballot shall be treated as if no write-in had occurred and the regular vote shall be counted. If a properly registered write-in causes an over-vote, it shall be treated as any other over-vote; and none of the votes for the over-voted office shall be counted. However, the remainder of the ballot shall be counted. When counting write-in votes, poll officials must check for over-votes if the marksense ballot counter does not perform the function.

Author: Charles E. Grainger, Jr.

Statutory Authority: Code of Ala. 1975, §17-24-7(b).

History: New Rule: Filed February 10, 1998; effective March 17, 1998. Amended: Filed February 7, 2002; effective March 14, 2002.

307-X-1-.17 Counting Of Votes.

(1) An elector's ballot shall be counted for each office to be filed except for each office where it is impossible to determine the elector's choice for that office. The inability to determine the voter's choice for any particular office to be filled shall not cause the rejection of votes for other offices where the elector's choice may be determined. No ballot shall be rejected for any technical error which does not make it impossible to determine the elector's choice.

(2) (a) In precincts utilizing precinct ballot counters, the counters shall be programmed to return the ballot to the elector if the elector has marked more names than there are persons to be elected to a particular office. The elector shall be provided the opportunity to review his or her ballot and to correct the ballot.

(b) If the elector chooses to correct the ballot, the original ballot shall be spoiled by a poll worker and the elector shall be issued a new, blank ballot.

(c) If the elector chooses not to correct the ballot, the elector shall deposit the ballot into a ballot box or other suitable container. After the close of the polls, polling officials shall count said ballot by hand as described in Sections 17-13-1 and 17-13-2. The determination of the elector's choice shall be governed by paragraph (4) of this rule. Poll watchers of opposing interests and members of the media, if any are present, shall be permitted to witness this process.

(3) (a) In counties utilizing central ballot counters, the counters shall be programmed to return a ballot to poll officials

if the elector has marked more names than there are persons to be elected to a particular office. Each returned ballot shall be counted by hand pursuant to this section.

(b) Each ballot shall be reviewed by polling officials to determine the elector's choice for each office to be filled. This determination shall be made pursuant to the standards set forth in paragraph (4) of this rule.

(c) Upon determining the elector's choice for each office, the polling officials shall manually add the elector's votes to the total votes for each candidate for the offices to be filled.

(4) In determining the elector's choice, polling officials shall consider the ballot as a whole and determine the manner in which the elector marked his or her choices on the ballot. Only those choices marked consistently in this manner shall be counted for each office to be filled. As used herein, "marked consistently" pertains to the manner in which the voter expresses his or her choice and not the pattern of candidates selected as between political parties on the ballot. If the polling officials are unable to determine the manner in which an elector marked his or her choices, the ballot shall be rejected in its entirety.

(5) (a) If a precinct ballot counter should malfunction, the poll shall remain open and voters shall deposit their ballots in a ballot box or other suitable container. The inspector shall notify the custodian, who shall attempt to repair or replace the equipment, and the probate judge, who shall maintain a public list of all precincts in which equipment failure has occurred.

(b) If the precinct ballot counter cannot be repaired, after the polls close the ballot box shall be opened and the ballots counted either by hand as described in Sections 17-13-1 and 17-13-2 or by feeding the ballots into an operable precinct ballot counter. If counted by hand, the determination of the elector's choice shall be governed by paragraph (4) of this rule. Poll watchers of opposing interests and members of the media, if any are present, shall be permitted to witness this process.

(c) In counties utilizing precinct ballot counters, any ballot returned by the machine in a post-election recount must be counted by hand following the rules for central ballot counters as provided in paragraph (3) of this rule. The results of this hand count shall be added to the certificate of results, and the ballots shall be bound separately and returned with the other ballots.

(6) If a central ballot counter should malfunction, the count shall be suspended until the equipment is repaired or replaced or the ballots are counted by hand as described in Sections 17-13-1 and 17-13-2. If counted by hand, the determination of the elector's choice shall be governed by paragraph (4) of this rule. Poll watchers of opposing interests and members of the media, if any are present, shall be permitted to witness this process.

(7)(a) In counties utilizing precinct ballot counters, if a ballot is defective and the counter is unable to accept or read the ballot, the ballot shall be spoiled and the elector shall be issued a new ballot.

(b) In counties utilizing central ballot counters, if a ballot is defective and the counter is unable to accept or read the ballot, the ballot shall be counted by hand as described in Sections 17-13-1 and 17-13-2. If counted by hand, the determination of the elector's choice shall be governed by paragraph (4) of this rule. Poll watchers of opposing interests and members of the media, if any are present, shall be permitted to witness this process.

Author: Charles E. Grainger, Jr.

Statutory Authority: Code of Ala. 1975, §17-24-7(b).

History: **New Rule:** Filed February 10, 1998; effective March 17, 1998. **Amended:** Filed February 7, 2002; effective March 14, 2002.

307-X-1-.18 Certificate Of Results.

(1) Where precinct counters are used. After closing the polls and sealing the required records, the poll officials shall follow the manufacturer's instructions to lock the equipment against further voting and to obtain printouts of the votes on each office and question. The first printout shall be torn from the equipment so that all printing during the day, from the initial test before the polls opened through the first printout of results shall be on one continuous sheet or roll of paper. Then, other printouts of the results shall be produced and torn out. To each certificate shall be added, if it is not automatically printed, the following information:

- (a) The name of the precinct.
- (b) The date.

- (c) The identifying number (serial number) of tabulating equipment.
- (d) The value of the public counter (indicating the number of votes cast).
- (e) The name of each candidate next to the total number of votes cast for that candidate.
- (f) The number and short title of each proposition next to the number of votes for or against the proposition.

The challenged ballots and, in general elections only, any write-in votes shall be counted and the totals added to the certificates of result. All poll officials shall sign each certificate of result.

- (2) Where central ballot counters are used.
 - (a) The poll officials shall record on the Ballot Accounting Certificate the following information:
 1. The total number of each ballot style issued to the precinct.
 2. The total number of voted ballots.
 3. The total number of signatures in voters poll list book.
 4. The total number of spoiled ballots.
 5. The total number of challenged ballots.
 6. The total number of unused ballots of each style.
 - (b) The Ballot Accounting Certificate shall be in a form that provides for proper accountability of all voted and not voted ballots. All challenged ballots from the precinct shall not be counted at the precinct and shall be placed in a Challenged Ballot Envelope, along with one copy of the Challenged Ballot Oath and returned to the central count location. The central count location poll workers shall hand count all challenged ballots and record those results on a Challenged Ballot Certificate of Result form. The Challenged Ballot Certificate of Result form shall be verified and signed by the central count poll workers. The original copy of the Challenged Ballot Certificate of Result form is to be forwarded to the Canvassing Board, and the duplicate copy is to remain with the record of election container. In General Elections only, the

write-in votes for each office shall be tabulated by the central count poll workers. These write-in votes shall be recorded on a write-in certificate of result to be provided for that purpose. The write-in certificate of result shall be verified and signed by the central count poll workers.

(c) After the polls close, the Inspector of the precinct shall immediately close and seal the ballot box that contains the voted ballots with a numbered seal provided for in the election supplies. This sealing of the ballot box shall be verified by all other polling officials. The sealed and unopened ballot box containing the voted ballots and the election supplies shall be returned to the central count location by the Inspector and at least one other polling official. These officials shall remain at the central count location and assist in the processing of their precinct's ballots until the certificate of result for their precinct is produced. These officials along with at least one central count poll official shall verify and sign this certificate of result. (The results should correspond with the total number of persons voting previously recorded on the Ballot Accounting Certificate). The signed certificate of result shall be distributed as follows: The original to the Judge of Probate who shall keep it for public inspection and/or an election contest, one copy for each party participating in the primary, and one copy shall be sealed with counted ballots and all other pertinent election supplies in the record of election container and given to the authority holding for storage the record of election container. The posting of a certificate of result at the polling place/precinct shall not be required where central ballot counters are used.

Author: Charles E. Grainger, Jr.

Statutory Authority: Code of Ala. 1975, §17-24-7(b).

History: **New Rule:** Filed February 10, 1998; effective March 17, 1998. **Amended:** Filed February 7, 2002; effective March 14, 2002.

307-X-1-.19 Disposition Of Forms. After completing and signing the certificate of result, the election officials shall seal the ballots, certificates, and other records as follows:

(1) Where precinct ballot counters are used:

(a) The list of registered voters, the record of assisted voters, the ballot accounting certificate(s) and the first copy of the certificates of result shall be placed in an envelope addressed to the judge of probate who shall keep them for public inspection and/or election contest, and the list of

registered voters or a copy thereof may be used by the board of registrars in updating their records.

(b) All used marksense ballots (both voted and spoiled), all challenged ballots, one copy of the certificate of result, the poll list (already sealed in a separate envelope), one copy of each challenged voter's affidavit and each witness' affidavit, and all requests for assistance in voting shall be placed in a large envelope or box, which will be sealed and signed across the seal by all inspectors. The inspector shall retain possession of the memory pack until it is read into the tabulator.

1. Each envelope or box shall be sealed and signed across the seal by the inspectors. On the outside of each envelope the inspectors shall record the precinct or district and date of the election. The envelopes or boxes shall remain unopened and be returned by the inspector or returning officer immediately in the manner provided for by law.

2. The State Records Commission is requested to develop and keep current a schedule for the retention and disposition of election records for the guidance of the officials to whom these records are sent.

(2) Where central counters are used, the procedure for precinct ballot counters shall be followed except that the certificate of result will not be produced at the precinct, and a copy of the certificate of result will not be posted at the polling place. After the polls close, the ballot box insertion door will be resealed with a numbered seal provided for in the election supplies. The Inspector and at least one other poll official shall deliver the sealed and unopened ballot box to the central count location for processing and counting. A copy of the ballot accounting certificate shall be delivered with the ballot box to the central count location. After the count, the ballots of each precinct shall be sealed in a separate envelope or box which shall be labeled with the name of the precinct, the date of the election, the type of ballots and the total number contained therein. One copy of the Ballot Accounting Certificate and one copy of the certificate of result shall also be sealed in this envelope or box by the central count polling officials, and it shall be delivered to the authority holding the records of election container.

(3) In primary elections, the marksense ballots, certificates and other records shall be distributed as required in general elections except there shall be one canvassing envelope for each party participating in the primary, and the poll list of each party shall be delivered to the county

executive committee of that party to be obtained unopened for use in the event of a contest as provided by Section 17-16-25.

Author: Charles E. Grainger, Jr.

Statutory Authority: Code of Ala. 1975, §17-24-7(b).

History: **New Rule:** Filed February 10, 1998; effective March 17, 1998. **Amended:** Filed February 7, 2002; effective March 14, 2002.

307-X-1-.20 Retest. The probate judge may order, pursuant to Section 17-24-9, a post-election retest of any precinct ballot counter, central ballot counter, direct recording electronic voting device or memory pack tabulator using the same procedures prescribed for the pre-election test. If the retest shows a malfunction or error in the equipment or its program, the probate judge shall order a recount as described below at county expense.

Author: Charles E. Grainger, Jr.

Statutory Authority: Code of Ala. 1975, §17-24-7(b).

History: **New Rule:** Filed February 10, 1998; effective March 17, 1998. **Amended:** Filed February 7, 2002; effective March 14, 2002.

307-X-1-.21 Recount.

(1) Any person may petition a county canvassing authority for a recount of any or all precinct returns for offices in the election that the person was a qualified elector. The time period for requesting a recount begins with the production of the certificate of result and ends forty-eight (48) hours after the official canvass of county returns. This county canvassing authority is the county canvassing board in general elections and the county executive committee in a party primary. The petitioner must be prepared to pay the cost of the recount and should be required to give security to cover these costs. The county canvassing authority is to set the amount of the security based upon an estimate of actual costs. There being a public interest in fair and accurate elections, these costs shall be kept to a minimum by using county personnel or volunteer workers whenever possible. However, the recount must be conducted under the supervision of a trained and certified poll official and/or Probate Judge of the County where the recount is conducted so long as the recount is not for the election of a Probate Judge. Representatives of opposing interests shall be given at least twenty-four (24) hours notice and shall be invited to participate in the recount.

(2) The recount should be conducted as simply as the type of equipment and local conditions permit provided that the following minimum safeguards are observed. The box or envelope holding the ballots shall be delivered unopened to the supervising official in charge of the re-count. A representative of the county canvassing authority having custody of the ballots shall be present during the recount. The marksense ballot counter shall be re-tested before the recount. The recount shall consist of reading the ballots through the counter. Any ballot that was counted in the original election but is rejected by the counter in the recount shall be counted by hand. Representatives of opposing interests have the right to participate in the hand count, and any unresolved disputes over the interpretation of the voter's choice may be appealed to the canvassing authority.

(3) When the recount has been completed, the ballots shall be returned to their container along with a printout of the recount results. The ballot container shall be sealed and signed by the inspector conducting the recount and the representative of the county canvassing authority having custody of the ballots.

(4) If the recount produces a change in precinct totals of sufficient magnitude to alter the result of the election, the outcome shall constitute grounds for an election contest as now prescribed by law. If the recount of the resulting contest alters the result of the election, the cost of the recount shall be borne by the county.

Author: Charles E. Grainger, Jr.

Statutory Authority: Code of Ala. 1975, §17-24-7(b).

History: New Rule: Filed February 10, 1998; effective

March 17, 1998. **Amended:** Filed February 7, 2002; effective March 14, 2002.

307-X-1-.22 Absentee Voting. Marksense ballot counters may be used to count absentee ballots. Absentee poll officials are to be appointed and trained in the same manner as prescribed for regular precinct poll officials in these rules. The statute requiring one set of poll workers for each 200 absentee ballots (Section 17-10-11) does not apply where marksense ballot counters are used. The number of poll officials shall be determined by the number of marksense ballot counters provided. The county commission may provide more than one counter based upon the recommendation of the absentee election manager. Beginning not earlier than noon on election day, the absentee poll officials shall perform the duties prescribed in Section 17-10-11. Where more than 200 absentee ballots are to be counted on one marksense ballot counter, the absentee election manager may authorize poll

officials to open the ballot box and begin processing ballots through the counter before the polls close provided that:

(1) Sealed affidavit envelopes are to remain sealed, not counted, and otherwise handled in accordance with state law if one or more of the following conditions are established:

- (a) Duplicate votes from the same registered voter;
- (b) Failure to have the affidavit notarized or witnessed by two witnesses;
- (c) Failure to identify the voter's place of residence;
- (d) Failure to identify the voter's reason for voting absentee;
- (e) Failure to contain the voter's signature or mark.

(2) All other sealed affidavit envelopes have been opened and checked in accordance with law and all inner envelopes containing the ballots have been placed in a sealed ballot box before the ballot box is opened and any ballots are processed, and

(3) The absentee election manager takes security measures to prevent the vote totals from being printed before the polls close. The prohibition on counting before the polls close contained in §17-10-11 applies to any attempt to tally votes as the ballots are read into the marksense ballot counter.

Author: Charles E. Grainger, Jr.

Statutory Authority: Code of Ala. 1975, §17-24-7(b).

History: **New Rule:** Filed February 10, 1998; effective March 17, 1998. **Amended:** Filed February 7, 2002; effective March 14, 2002.

307-X-1-.23 Direct Recording Electronic Voting Devices.

(1) Except for the following listed rules, the use of electronic voting devices shall not be governed by Rules 307-X-1-.03 through 307-X-1-.22 but shall be governed by this rule:

- (a) Rule 307-X-1-.03, Application to Municipal Elections.

(b) Rule 307-X-1-.07, Custody and Transportation of Equipment.

(c) Rule 307-X-1-.18, Certificates of Result for Precinct Ballot Counters.

(d) Paragraph (1) of Rule 307-X-1-.19, Disposition of Forms, except as applied to marksense ballots and that there shall be no ballot accounting certificate.

(e) Rule 307-X-1-.21, Recount, except as provided for in Paragraph (6) of this Rule.

(f) Rule 307-X-1-.22, Absentee Voting.

(2) Keys. Unless the direct recording electronic voting device is designed to be locked with a key, the requirements in Chapter 17-9 relating to a key and key envelope shall not apply. However, each device shall be sealed before delivery to the polling place and after the polls close as required by Sections 17-9-17 and 17-9-33.

(3) Testing. The probate judge shall have each direct recording electronic voting device tested to ascertain that it will accurately count the votes cast for all offices and all measures. Each direct recording electronic voting device shall be publicly tested before each election in which it is to be used. The date of the public test shall be as close as is practical to the date of the election and not more than fourteen (14) days [required by §17-24-9] before the election. Public notice of the time and place of the test shall be given. The device shall be tested by casting votes so that each candidate and each position on each amendment or other proposition shall receive at least two (2) votes. There shall be at least one over-vote in each race. In general elections, the device shall be tested for straight ticket and split ticket voting; and there shall be at least one write-in vote for each contested office. For auditing purposes, the Probate Judges shall have produced a paper record of each individual test vote cast which shall be retained with the records of the election associated with that voting device.

(4) Opening the polls. The poll officials shall follow the manufacturer's instructions to open the equipment and prepare it for voting. They shall produce a printout showing the initial values of the vote registers. The poll officials and at least two poll watchers of opposing interests (if such there be) shall check the printout to verify that the registers are set at zero and shall sign the same. The printout shall remain attached to the paper roll so that all events of the day shall be recorded

on one continuous roll of paper. If any vote registers are not set on zero or if the ballot face is incorrect, the inspector shall immediately notify the probate judge or his designee. Voting shall not be permitted on such device until it has been repaired. Voters may be permitted to vote on a substitute device or use paper ballots.

(5) Challenged ballots. The procedure for challenging voters shall be the same as prescribed in Rule 307-X-1-.15 except that the votes placed on the challenged ballots are to be counted by hand by the precinct polling officials after the polls are closed. The results shall be handwritten on the tape containing the totals from the direct recording electronic vote counters. The challenged ballots shall then be placed inside an envelope and otherwise handled in accordance with state law.

(6) Recount.

(a) Where a direct recording electronic voting device system is not capable of producing a recount of individual votes cast in an election, the county canvassing authority shall provide for a retest of the direct recording electronic voting devices using the procedure provided for in Paragraph (3) of this Rule. If any of the direct recording electronic voting devices fail the retest, and if the machines failing the retest recorded a sufficient number of votes on election day to effect the result of the election, such failure shall constitute grounds for an election contest as now prescribed by law and the cost of the retest shall be borne by the county.

(b) Where a direct recording electronic voting device system is capable of producing receipts of individual votes cast, such receipts shall be deposited by the voter into a sealed container preserved for the performance of a recount or use in an election contest. Such receipts may be recounted either manually or electronically as the technology of the system provides. At the conclusion of the recount, the receipts shall be re-deposited into the container, resealed and preserved with the records of the election.

Author: Charles E. Grainger, Jr.

Statutory Authority: Code of Ala. 1975, §17-24-7(b).

History: **New Rule:** Filed February 10, 1998; effective March 17, 1998. **Amended:** Filed February 7, 2002; effective March 14, 2002.