

Package 1

5:02:03:14. Acknowledgement notice for invalid or incomplete voter registration applications. If a person submits to the county auditor a voter registration application that cannot be filed because it is invalid or incomplete, the auditor must send, by nonforwardable mail, the following acknowledgement notice:

Invalid or Incomplete Voter Registration Acknowledgement Notice

_____ Your voter registration is not valid because you are not eligible to be a registered voter.

Reason:

_____.

_____ Your voter registration has not been processed because your application is incomplete.

Please call our office if you have questions or visit our office to complete your registration.

You will not be able to vote in accordance with the voter registration submitted unless you provide the needed information before _____.

To complete your voter registration or if you have questions, please visit our office at

_____.

Thank You,

County Auditor

Source: 21 SDR 77, effective October 24, 1994; 22 SDR 95, effective January 18, 1996; 28 SDR 99, effective January 17, 2002; 44 SDR 94, effective December 4, 2017; 50 SDR 12, effective August 8, 2023.

General Authority: SDCL 12-1-9(3), 12-4-5.3, 12-4-35.

Law Implemented: SDCL 12-4-5.3.

5:02:05:02.01. Instructions to the voters using optical scan ballots. The instructions to voters using optical scan ballots must be posted in at least two locations within close proximity to the entrances to the polling place, depicted in at least forty-eight-point type , and in the following form:

INSTRUCTIONS TO THE VOTERS:

TO MARK THE BALLOT

Completely fill in the oval (●) next to the name or ballot question. Use only the black or blue pen given to you!

Do not make any marks other than completely filling in the oval.

Do not erase anything on your ballot.

Do not rip your ballot or make holes in it.

Do not write in a name.

IF YOU MAKE A MISTAKE

If you make a mistake, give the ballot back and get a new one.

If you cast more votes than allowed in a race, give the ballot back and get a new one.

TO RETURN THE BALLOT AFTER VOTING

Put the ballot in the holder so the ballot stamp shows and take the ballot to the ballot box where the ballot stamp can be seen by the poll worker.

IF YOU NEED HELP, ASK.

PROVISIONAL BALLOT

You may vote a provisional ballot if your name is not on the voter list but you registered in this precinct by the deadline. You must complete both the envelope and ballot.

VOTING RIGHTS

Any voter who can't mark a ballot because the voter has a physical disability or can't read, may ask any person he or she chooses to help them vote.

Any voter may ask for instruction in the proper procedure for voting.

Any voter at the polling place prior to 7:00 p.m. is allowed to cast a ballot.

ELECTION CRIMES

Anyone who makes a false statement when they vote, tries to vote knowing they are not a qualified voter, or tries to vote more than once has committed an election crime.

OTHER INFORMATION

The polls are open from 7:00 a.m. to 7:00 p.m. If your voting rights have been violated, you may call the person in charge of the election at _____, the Secretary of State at 888-703-5328, or your state's attorney.

The instructions to be posted in each voting booth for optical scan ballots must be in the following form:

INSTRUCTIONS TO THE VOTERS:

TO MARK THE BALLOT

Completely fill in the oval (●) next to the name or ballot question. Use only the-blue or black pen given to you!

Do not make any marks other than completely filling in the oval.

Do not erase anything on your ballot.

Do not rip your ballot or make holes in it.

Do not write in a name.

IF YOU MAKE A MISTAKE

If you make a mistake, give the ballot back and get a new one.

If you cast more votes than allowed in a race, give the ballot back and get a new one.

TO RETURN THE BALLOT AFTER VOTING

Put the ballot in the holder so the ballot stamp shows and take the ballot to the ballot box where the ballot stamp can be seen by the poll worker.

IF YOU NEED HELP, ASK.

The instructions to be published with the facsimile ballot for primary and general elections must be in the following form:

INSTRUCTIONS TO THE VOTERS

VOTING RIGHTS

Any voter who can't mark a ballot because the voter has a physical disability or can't read, may ask any person he or she chooses to help the voter vote.

Any voter may ask for instruction in the proper procedure for voting.

Any voter at the polling place prior to 7:00 p.m. is allowed to cast a ballot.

If your voting rights have been violated, you may call the person in charge of the election at _____, the Secretary of State at 888-703-5328, or your state's attorney.

Any person who is convicted of a felony on or after July 1, 2012, loses the right to vote. However, the person may register to vote following the completion of the person's felony sentence.

Any person who is convicted of a felony on or before June 30, 2012, and who receives a sentence of imprisonment to the adult penitentiary system, including a suspended execution of sentence, loses the right to vote. The person may register to vote following completion of the person's sentence. Further information is available at www.sdsos.gov.

ELECTION CRIMES

Anyone who makes a false statement when voting, tries to vote knowing he or she is not a qualified voter, or tries to vote more than once has committed an election crime.

Source: 27 SDR 146, effective July 9, 2001; 28 SDR 99, effective January 17, 2002; 29 SDR 177, effective July 2, 2003; 30 SDR 171, effective May 10, 2004; 32 SDR 109, effective December 26, 2005; 32 SDR 225, effective July 3, 2006; 36 SDR 209, effective June 30, 2010; 39 SDR 123, effective January 16, 2013; 42 SDR 15, effective August 11, 2015.

General Authority: SDCL 12-1-9(3)12-1-9(9).

Law Implemented: SDCL 12-4-18, 12-16-23, 12-16-25, 23A-27-35.

CHAPTER 5:02:10

ABSENTEE VOTING

Section

- 5:02:10:01 Application for absentee ballot.
- 5:02:10:01.01 Receipt for absentee ballot.
- 5:02:10:01.02 Guidelines for acceptance of facsimile absentee ballot applications from UOCAVA voters.
- 5:02:10:01.03 Combined absentee ballot application/return envelope.
- 5:02:10:01.04 Repealed.
- 5:02:10:02 Repealed.
- 5:02:10:03 Envelope for sending ballots to voter.
- 5:02:10:04 Instructions to absentee voters.
- 5:02:10:05 Official return envelope for ballots used in voting.
- 5:02:10:06 Official record of absentee ballots delivered to voters.
- 5:02:10:07 Repealed.

5:02:10:08 Envelopes for use with voting service and overseas ballots.

5:02:10:09 Nursing facility, assisted living center, or hospital absentee voting.

5:02:10:04. Instructions to absentee voters. All ballots mailed or delivered to absentee voters shall include instructions that read as follows:

TO THE VOTER:

- Mark your ballot privately.
- Fill in the oval next to the name or ballot question. Use only a blue or black ink pen. Do not use a felt tip pen or marker.
- (insert a statement regarding whether and how many times the ballot should be folded).
- Place your ballot in the return envelope and seal it securely.
- Complete the statement on the back of the return envelope and (bold) **SIGN IT** (unbold).
- Mail the ballot (voter must pay for postage to mail the ballot unless the voter is covered under the UOCAVA act), deliver it in person, or have someone deliver it for you to the person in charge of the election. (bold) **Do not return absentee ballot to your polling place** (unbold).
- The ballot must be received by the person in charge of the election in time to transmit it to your precinct polling place before the polls close on election day.
- Additional information on absentee voting is available at www.sdsos.gov.

Printers Note: Use correct return time designation in sixth bullet point.

Source: 2 SDR 46, effective December 30, 1975; 5 SDR 31, effective November 1, 1978; 6 SDR 25, effective September 24, 1979; 8 SDR 24, effective September 16, 1981; 10 SDR 27, effective September 26, 1983; 12 SDR 43, effective September 23, 1985; 19 SDR 12, effective August 5, 1992; 31 SDR 35, effective September 23, 2004; 32 SDR 225, effective July 3, 2006; 35 SDR 306, effective July 1, 2009; 36 SDR 112, effective January 11, 2010; 45 SDR 9, effective July 30, 2018.

General Authority: SDCL 12-1-9(9).

Law Implemented: SDCL 12-19-4, 12-19-5, 12-19-41, 42 U.S.C. § 1973.

5:02:10:09. Nursing facility, assisted living center, or hospital absentee voting. When the county auditor or the county auditor's designee is at a facility to conduct absentee voting in

accordance with SDCL 12-19-9.1, a resident who wishes to vote using an absentee ballot must be given an absentee ballot and the instructions for how to vote by absentee ballot pursuant to § 5:02:10:01.03. The resident shall complete the ballot alone, but must remain in the presence of the auditor or the auditor's designee. Any notified person listed in SDCL 12-19-9.1 may also be present.

The auditor or the auditor's designee must be present during the entire time the absentee voting is being conducted.

The receptacle used at a facility must be sealed at the auditor's office prior to transporting to a facility and may only be used for absentee voting at a facility.

While at the facility, the auditor or the auditor's designee shall place the completed absentee ballot into a sealed receptacle before leaving the facility. If the receptacle is used at more than one facility, the auditor must maintain a log of the facilities and the date of the voting.

The auditor or the auditor's designee shall transport the sealed receptacle to the auditor's office and secure the sealed receptacle in accordance with SDCL chapter 12-20 and § 5:02:16:37.

Upon return to the auditor's office, the ballots must be processed in the same manner as all in-person absentee ballots and stored in a secure storage area.

For purposes of this section, the term, facility, means a nursing facility, assisted living center, or hospital as defined in SDCL 34-12-1.1.

Source:

General Authority: SDCL 12-1-9(4)(9), 12-19-9.1.

Law Implemented: SDCL 12-19-9.1, 12-19-9.3.

CHAPTER 5:02:16

COUNTING AND CANVASSING OF BALLOTS

Section

- 5:02:16:00 Definitions.
- 5:02:16:01 Delivery of supplies to counting board -- Signing of certificate.
- 5:02:16:01.01 Ballot box security.
- 5:02:16:02 Signing of oaths.
- 5:02:16:03 Public vote count.
- 5:02:16:04 Use of tally sheets.
- 5:02:16:05 Comparison of registration list and pollbook.
- 5:02:16:06 Opening ballot box.
- 5:02:16:07 Folded ballots separated.
- 5:02:16:08 Duplicate ballots.
- 5:02:16:09 Drawing of excess ballots.
- 5:02:16:09.01 Endorsing of excess ballots.
- 5:02:16:10 Unstamped ballots.
- 5:02:16:11 Separation of ballots.
- 5:02:16:12 Order of vote counting.
- 5:02:16:13 Repealed.
- 5:02:16:14 Scrutiny of ballots by counting board.
- 5:02:16:15 Tally of ballots.
- 5:02:16:16 Repealed.

5:02:16:17 Repealed.

5:02:16:17.01 Write-in votes not counted.

5:02:16:17.02 Counting imperfectly marked paper ballots.

5:02:16:18 Repealed.

5:02:16:19 Repealed.

5:02:16:20 Repealed.

5:02:16:21 Voter's intent to be determined.

5:02:16:22 Repealed.

5:02:16:22.01 Use of prior court decision.

5:02:16:23 Repealed.

5:02:16:24 Repealed.

5:02:16:25 Unofficial returns of precinct vote.

5:02:16:26 Entry of precinct vote on unofficial return list.

5:02:16:27 Repealed.

5:02:16:28 Repealed.

5:02:16:29 Repealed.

5:02:16:30 Repealed.

5:02:16:31 Signing of certificates.

5:02:16:32 Repealed.

5:02:16:33 Procedure for placing voted ballots in the ballot box.

5:02:16:34 Return of unvoted ballots.

5:02:16:34.01 Return of duplicate ballots of one voter not counted.

5:02:16:35 Ballots voted but not counted.

- 5:02:16:36 Recapitulation sheet.
- 5:02:16:37 Sealing of ballot box.
- 5:02:16:38 Repealed.
- 5:02:16:39 Form of the paper seal.
- 5:02:16:40 Return and sealing of pollbook.
- 5:02:16:41 Pollbook envelope seal.
- 5:02:16:41.01 Return of duplicate tally sheet.
- 5:02:16:42 Return of election material.
- 5:02:16:43 Purpose of this chapter.
- 5:02:16:44 Provisional and uncounted absentee ballot return envelope.

5:02:16:01.01. Security of the Receptacle or Container. The person in charge of the election may place a receptacle or container at the person's office for voters to return a voted absentee ballot. If a receptacle or container is used, the person in charge of the election, or the person's designated staff must ensure the receptacle or container is:

- (1) Visible to the public and staff at all times while in use, or is monitored by a security camera that is recording with the recording stored for at least twenty-two months;
- (2) Secured by a seal with a serial number or by a padlock. If a seal is used, the serial number must be recorded and compared at the time the receptacle or container is opened and ballots are removed from the receptacle or container for processing. If a padlock is used, the key must be secured so only the person in charge of the election or the person's designated staff have access to it;
- (3) Audited each business day, to verify that the number of ballots received match the number of ballots shown as received in Total Vote; and

(4) Emptied at least daily during normal business hours moving the absentee ballots to a secure location in the office of the person in charge of the election that is only accessible to the person and the person's designated staff.

Source:

General Authority: SDCL 12-1-9(4), 12-19-9.3.

Law Implemented: SDCL 12-19-9.3.

Package 2

CHAPTER 05:02:23

POST-ELECTION AUDITS

Section

5:02:23:01 Oath of post-election audit board.

5:02:23:02. Definitions.

5:02:23:03. Notice of appointment of post-election auditing board.

5:02:23:04. Signing of oaths.

5:02:23:05. Staff for post-election auditing board.

5:02:23:06. Post-election auditing board receipt for official ballots.

5:02:23:07. Public vote count.

5:02:23:08. Opening container or receptacle.

5:02:23:09. Auditing procedures.

5:02:23:10. Tally of ballots.

5:02:23:11. Post-election audit tally sheets.

5:02:23:12. Certificate of Post-Election Audit.

5:02:23:13. Procedure for placing counted ballots in the ballot receptacle or container.

5:02:23:14. Form of the seal.

5:02:23:15. Reimbursement of post-election audit costs.

5:02:23:02. Definitions. Terms used in this chapter mean:

(1) "Counted ballot," a voted ballot counted by the post-election auditing board in at least one contest;

(2) " Seal," A security mechanism using strategically placed serialized or tamper-evident materials that alert officials if a device used in the elections process has potentially been altered or accessed without authorization;

(3) "Board member," A member of the post-election auditing board meeting the requirements of SDCL 12-17B-18;

(4) "Over vote," a race in which more votes were cast on a ballot than allowed for that race

(5) "Voted ballot," a ballot placed in the ballot box at any time;

(6) "Write-in vote," a name written on a ballot in an attempt to indicate a vote for that person; and

(7) "Manual Count," as defined by counting other than be electronic device.

Source:

General Authority: SDCL 12-1-9(4), (11).

Law Implemented: SDCL 12-17B-18.

5:02:23:03. Notice of appointment of post-election auditing board. The notice of appointment of a post-election auditing board must be in the following form:

STATE OF SOUTH DAKOTA)

_____) SS NOTICE OF APPOINTMENT

COUNTY OF _____)

TO _____

_____ Auditing Board Member, _____ party _____

_____ Auditing Board Member, _____ party _____

_____ Auditing Board Member, _____ party _____

_____ Auditing Board Member, _____ party _____

_____ Auditing Board Member, _____ party _____

_____ Auditing Board Member, _____ party (add/remove lines as necessary)

You are appointed as a member of the post-election audit for the 20____ (primary or general) election in _____, _____ County, on (June or November) _____, 20____. Please report to _____ at _____ am/p.m. the day of the post-election audit. If you are unable to serve, please notify the county auditor immediately.

The post-election audit training will be held at _____ on the _____ day of _____, 20____, at _____ m.

Witness my hand and the seal of this county, this _____ day of _____, 20____.

County Auditor

Source:

General Authority: SDCL 12-1-9(4), (11).

Law Implemented: SDCL 12-17B-18.

5:02:23:04. Signing of oaths. A member of the post-election auditing board, shall sign the oath or affirmation of office prescribed in § 5:02:23:01 before performing any duties of a member of the board.

Source:

General Authority: SDCL 12-1-9(4), (11).

Law Implemented: SDCL 12-17B-18.

5:02:23:05. Staff for post-election auditing board. The county auditor shall provide administrative support and staff for the post-election auditing board.

Source:

General Authority: SDCL 12-1-9(4), (11).

Law Implemented: SDCL 12-17B-18, 12-17B-22.

5:02:23:06. Post-election auditing board receipt for official ballots. The post-election auditing board's receipt for the official precinct ballots must be in the following form:

STATE OF SOUTH DAKOTA

_____ COUNTY

_____ PRECINCT

_____ We, the Post-Election Auditing Board Members, do hereby certify that on the _____ day of _____, 20____, at the post-election audit for the (Primary or General) election held on _____, 20____, we received from _____, County Auditor, a sealed package containing the following official precinct ballots:

(Here list the official precinct ballots received)

for the purpose of conducting a post-election audit.

_____ Dated this _____ day of _____, 20____.

Post-Election Auditing Board member

Post-Election Auditing Board member

Post-Election Auditing Board member

Post-Election Auditing Board member

Post-Election Auditing Board member (add

additional lines when necessary)

Source:

General Authority: SDCL 12-1-9(4), (11).

Law Implemented: SDCL 12-17B-18.

5:02:23:07. Public vote count. At the post-election audit, the post-election auditing board shall publicly manually count the votes and only adjourn after the count is completed and the certificate of post-election audit signed. The post-election auditing board may only exclude or prohibit a member of the public from witnessing any portion of the post-election audit if that person's conduct is disruptive.

Source:

General Authority: SDCL 12-1-9(4) (11).

Law Implemented: SDCL 12-17B-18, 12-17B-20, 12-17B-21.

5:02:23:08. Opening receptacle or container. The sealed receptical or container must be unsealed and the ballots taken out, and sorted by precinct,

Source:

General Authority: SDCL 12-1-9(4), (11).

Law Implemented: SDCL 12-17B-18, 12-17B-20, 12-17B-25.

5:02:23:09. Auditing procedures. The following procedure must be used in auditing a precinct by manually counting the ballots:

(1) The post-election auditing board shall review ballots for proper marking procedure according to the voting instructions below. The post-election auditing board shall determine the votes to count as follows:

(a) A mark that is inside the oval on an optical scan ballot is counted as a vote;

(b) Any mark on an optical scan ballot that does not touch the oval and is not in the oval may not be counted as a vote;

(c) A mark on an optical scan ballot that touches two or more ovals is an over-vote and not counted;

(d) A write-in vote may not be counted; and

(e) Express votes are to be counted as shown on the Express vote ballot; and

(2) A majority vote of the post-election auditing board shall determine any question arising from the post-election audit; and

(3) The post-election auditing board shall certify the results as manually counted for the post-election audit by completing the certificate of post-election audit as provided in § 5:02:23:12. The board shall file the certificate of post-election audit with the county auditor.

Source:

General Authority: SDCL 12-1-9(4), (11).

Law Implemented: SDCL 12-17B-18, 12-17-B20, 12-17B-22.

5:02:23:10. Tally of ballots. As the vote is announced by a post-election auditing board member, another board member must make the appropriate mark on the post-election audit tally sheet prescribed in § 5:02:23:11. Yet another board member shall make the appropriate mark on a duplicate post-election audit tally sheet.

Source:

General Authority: SDCL 12-1-9(4), (11).

Law Implemented: SDCL 12-17B-20.

5:02:23:11. Post-election audit tally sheets. As shown below, a post-election audit tally sheet must contain a series of horizontal and vertical grid lines to form boxes of suitable size to contain five tally marks each, four of which may be upright and the fifth crossing the others at an oblique angle. Each fifth vertical grid line in the ruling must be red, so that five boxes for tally marks are contained between two red lines. Sufficient space must be provided in the left margin of each post-election audit tally sheet to legibly print or write in ink the name of the contest audited, with the name of the individual candidates or ballot question answers listed in the same order as on the official ballots used in the election. Sufficient space must be allowed in the right margin of the post-election audit tally sheet to legibly print or write in ink the total votes for each candidate or ballot question answer counted.

POST-ELECTION AUDITING TALLY SHEET

ELECTION: _____

AUDIT DATE: _____

COUNTY AND PRECINCT: _____ **# OF BALLOTS** _____
Received from Auditor

CONTEST NAME: _____

CANDIDATE NAME OR QUESTION						TOTAL VOTES:			

CANDIDATE NAME OR QUESTION						TOTAL VOTES:			

(add as many candidate names and tally boxes as necessary)

AUDITING BOARD MEMBER: _____
(PRINT) (SIGN)

AUDITING BOARD MEMBER: _____
(PRINT) (SIGN)

(add as many lines as necessary)

Source:

General Authority: SDCL 12-1-9(4), (11).

Law Implemented: SDCL 12-17B-20.

5:02:23:12. Certificate of post-election audit. The Certificate of Post-Election Audit must be in

the following form:

STATE OF SOUTH DAKOTA)

_____) **SS CERTIFICATE OF POST-ELECTION AUDIT**

COUNTY OF _____)

WE, THE UNDERSIGNED members of the Post-Election Auditing board, do hereby certify the results

of the audit for the following specified candidates or questions

_____ for the election held on the _____ day of _____,

_____. We completed the audit on the _____ day of _____.

<u>Precinct</u> _____			
	<u>Total Votes</u>	<u>Total Yes</u>	<u>Total No</u>
<u>Candidate Name</u>	_____		
<u>Candidate Name</u>	_____		
<u>Ballot Question Name</u>		_____	_____

The following is a brief description of the proceedings of this post-election audit:

Signed by a majority of the post-election auditing board:

Post-Election Auditing Board Member

Post-Election Auditing Board Member

Post-Election Auditing Board Member (add more board member lines as necessary)

Attested under SEAL by the _____ County Auditor:

Source:

General Authority: SDCL 12-1-9(4), (11).

Law Implemented: SDCL 12-17B-18, 12-17B-20, 12-17B-22.

5:02:23:13. Procedure for placing counted ballots in the ballot receptacle or container.

After the audit has been completed, the post-election auditing board shall place the counted ballots in the ballot receptacle or container. The board shall seal the receptacle or container as provided in § 5:02:23:14.

Source:

General Authority: SDCL 12-1-9(4), (11).

Law Implemented: SDCL12-17B-25.

5:02:23:14. Form of the seal.

The seal must be in the following form:

BALLOT RECEPTACLE OR CONTAINER SEAL

SIGNATURES OF POST-ELECTION AUDITING BOARD _____

(date)

(date)

(date)

(date)

At the conclusion of a post-election audit, the post-election auditing board must return the counted ballots to the ballot receptacle or container and must sign and affix a seal to each place where the receptacle or container may be opened, except where an opening is sealed with a metal seal.

Source:

General Authority: SDCL 12-1-9(4), (11).

Law Implemented: SDCL 12-17B-25.

5:02:23:16. Reimbursement of post-election audit costs. The county auditor shall submit expenses from the post-election audit to the secretary of state for reimbursement. The auditor shall use the forms designated by the secretary of state for this purpose.

Reimbursable expenses for the audit, are:

(1) Board member pay for conducting the audit and for training prior to the audit, not to exceed \$25/hour but no less than minimum wage;

(2) Supplies, including postage, no more than two hundred dollars;

(3) Rental costs for the location to conduct the audit, no more than two hundred fifty dollars per day;

(4) Publication costs, no more than one hundred seventy-five dollars;

(5) Ballot storage costs, no more than seventy-five dollars; and

(6) Travel (mileage) costs at the state per diem rate for every mile traveled;

(7) Meal reimbursement at state per diem meal rates; and

(8) Auditor and auditor's staff actual wages for hours spent training and assisting the post election audit board.

Expenses related to or associated with the primary or general election are not reimbursable post-election expenses. To avoid confusion, expenses that are not covered are costs related to media programming, ballot printing, ballot shipping, equipment maintenance, statewide ballot question publications, purchasing of election equipment (expressvotes, tabulators), polling place signage, testing costs, election day workers, postage, and insurance on voting equipment.

Source:

General Authority: SDCL 12-1-9(4)(11).

Law Implemented: SDCL 12-17B-18, 12-17B-20.