

DIRECTIVE 2008-39

March 21, 2008

To: COUNTY BOARDS OF ELECTIONS CHOOSING TO CONDUCT POST ELECTION AUDITS FOR THE MARCH 4, 2008 PRIMARY ELECTION**Re: Post Election Audits**

R.C. 3505.27 provides minimum requirements for counting and tallying of ballots. It further provides that the Secretary of State or a board of elections may “order other requirements to assure an accurate count of all votes cast.” After recent findings in the Evaluation and Validation of Election Related Equipment, Standards and Testing (EVEREST) project, it is our duty to ensure that the vote totals from computerized vote tabulation systems match that of the official ballots, whether it is paper optical scan ballots or the voter verified paper audit trail (VVPAT) on direct recording electronic (DRE) voting systems. To ensure the accuracy and integrity of elections in the State of Ohio and to move toward the adoption of “best practices” the following procedures for Post-Election Auditing are established.

Accordingly, the Secretary of State’s office is seeking the assistance of at least eleven counties to perform post election audits in their counties using the procedures set forth in this directive for the purposes of testing this post election audit protocol. The first eleven counties that participate will receive free registration to the Secretary of State’s summer conference in June 2008 for up to 8 people from its board of elections. The first eleven counties to affirmatively respond as participating will be afforded this incentive. Any other counties that want to participate may do so as well. Agreeing to participate will obligate the county to comply with the procedures established in this directive and to cooperate in any post-audit surveys by this office to evaluate the effectiveness of this post election audit protocol.

POST-ELECTION AUDIT PROCEDURES

A post election audit must take place no sooner than five days after the “official certification” of election results as long as a county Board of elections:

- Has not received a written application for a recount, or
- If there is not an automatic recount(s)

The post-election audit is to be completed between 6 and 10 days after the declaration of the “Official Certification.” No audit shall be held prior to the official canvass and certification of the election.

Post election audits will be transparent and open to the public. Therefore, board members must fix the time, method and place of the audit and give public notice by either proclamation or posting of the notice in the same manner that they notify the public of board of elections meetings.

A. All Voting Systems

1. Only the Presidential primary races (all candidates) must be audited for the March 4, 2008 Primary Election. A countywide or lesser political subdivision candidate race (any candidate) or question or issue may also be randomly chosen for auditing, if a Board of Election chooses to do so. The board may honor requests from the public for audits of particular races or issues, but is not required to do so. Decisions on additional races or questions or issues to audit should be based on staffing and time considerations so as to ensure accurate and timely auditing of the Presidential primary races.
2. The post election audit must be conducted by teams having an equal number of members of the major political parties.
3. The total number of votes cast, in the candidate races and question or issue elections being audited must be compared to the number of voters listed in the poll book, poll list, or signature poll book records by a team of at least two election officials, with each team having an equal numbers of members of the major political parties, including among the election officials conducting the comparison. These records must be available for visual inspection by observers. The observers shall not be permitted to handle the records.
4. Ballots must be checked for proper candidate position and to verify that each candidate's race or a question or issue has been properly identified. Observers may observe the inspection of the ballots.
5. Regular absentee ballot envelopes returned *after the statutory deadline* may be viewed by the observers. An observer may *not* see the actual ballot, only the envelopes, which must be sealed.
6. Ballots must be handled only by the members of the board of elections, its director, deputy director or other designated employees of the board.
7. The Board must randomly select whole precincts whose total equals at least 7% of the total vote.
8. The ballots for these precincts will then be manually hand counted.
9. For the purposes of this directive, "randomly select" means the following:
 - a. Whole precincts shall be selected for the audit. NOTE: Each precinct's ballots shall include for the audit all relevant regular ballots (VVPAT and/or optical scan paper ballots), provisional ballots, and absentee ballots tallied and recorded as part of the official count. Sealed VVPAT canisters may be opened for the purposes of conducting the post election audit, even if there is not a recount in the precinct.
 - b. Enough precincts shall be selected for the audit whose total votes cast, when taken together, equal at least 7% of the total votes cast in the election at issue.
 - c. To select the first precinct for the recount, these steps should be followed:

Step 1: make an alphabetical list of all the named political subdivisions within the election district or race to be recounted (for example, if a county office race will be recounted, list of all the political subdivisions within the county in alphabetical order);

Step 2: draw, by lot, one of the named political subdivisions from the alphabetical list created in Step 1 (“by lot” means to select one of the political subdivisions randomly, such as by placing all the names from the list in a hat and selecting one);

Step 3: create a numerical or alphabetical list of all precincts in the political subdivision selected under Step 2 that are within the election district to be recounted;

Step 4: draw, by lot, one of the precincts from the list created in Step 3. The precinct selected in Step 4 is the first precinct included in the hand recount.

- d. If the precinct selected in Step 4 equals at least 7% of the total votes cast, you are not required to select another precinct for the first manual recount.
- e. If additional precincts are required to reach the 7% threshold, these steps should be followed to select subsequent precincts:

Step 5: proceed to the next political subdivision after the political subdivision selected in Step 2 on the alphabetical list;

Step 6: determine the next higher precinct number, letter, or combination thereof, if any, after the precinct number selected in Step 4. If there is no next higher precinct number, letter, or combination thereof, choose the first precinct numerically, alphabetically or in combination. This precinct number for the political subdivision selected in Step 5 will be the next precinct hand counted for the recount.

Step 7: If the two precincts selected from Steps 1 through 6 do not equal at least 7% of the total votes cast in the election at issue, repeat Steps 5 and 6 – using the most recently selected political subdivision and precinct number as the basis for moving sequentially to additional political subdivisions and precincts within those subdivisions – until enough precincts are selected. For example, the third precinct would be from the next political subdivision after the name of the second selected political subdivision on the alphabetical list. The precinct number would be the next higher number, letter, or combination thereof from the precinct number selected for the second political subdivision. Steps 2 through 7 should be repeated sequentially until at least 7% of the total votes cast in the election at issue has been selected. If the board reaches the end of the alphabetical list of political subdivisions or the end of the numerical, alphabetical or combination thereof list of precincts, it shall proceed to the beginning of the list and proceed forward in like manner continuing to use the procedures in Steps 2 through 6.

- f. **Important Points to Remember:** If one precinct has been chosen from each political subdivision in the election district, and the sum of total votes cast remains less than 7% of the total votes cast in the election district, the board shall proceed by continuing to follow the alphabetical list in selecting a political

subdivision but simply select the next higher precinct letter, number, or combination thereof from that previously selected in the political subdivision. If there is no higher precinct in any political subdivision, choose the lowest alphanumeric precinct in that subdivision that has not already been selected for the recount and proceed sequentially.

B. Optical Scan Voting Machines:

1. Test the program
 - a. Prepare a test deck of ballots that are pre-marked and manually count them.
 - b. Run the test deck through the tabulator to verify the tabulator total matches the hand count. (Be sure to reset vote totals to zero when test is complete so your audit totals are correct)
2. The Audit
 - a. Ballots must be inspected for mutilations and other invalidities.
 - b. Ballots must be checked for proper candidate position and to verify that each candidate or issue has been properly identified.
 - c. The board must randomly select one or more whole precincts, the sum of whose total votes cast equals at least 7% of the total votes cast for the election being audited.
 - d. The board must then undertake the following steps in the order listed:
 - 1) Perform a hand count of the ballots in the randomly selected precincts.
 - 2) Run the hand counted precincts through the tabulator. (For Hart eScan voting system counties use results from the official canvass in the precincts that were hand counted since ballots cannot be rescanned through the tabulator).
 - 3) If the tabulator count does not match the hand count with a difference of 2 or less votes, and after rechecking the hand counted results the two results (hand counted and machine tabulated) are still not equal, another 3% of the total votes cast for the candidate's race, question or issue being audited must be hand counted. The additional 3% must be additional precincts randomly selected using the procedure set forth in Steps 2 through 7, continuing sequentially from the first 7% that was randomly selected for the post election audit. If the hand count and the machine tabulator count are still *not* equal, *all ballots for the candidate's race, question or issue being audited must be hand counted*. If a comparison of the results of the tabulator count and the hand counted ballots in the second batch are equal, and the difference between the hand count and the machine count in the first batch is no more than 2 votes, the remainder of the ballots may be processed through the tabulator. (Hart eScan counties may use the totals from the

official canvass for the remaining precincts). Otherwise, all ballots for the candidate's race, question or issue to be audited shall be hand counted.

- 4) At the conclusion of the recount, the program must be retested using the pre-audited stack of ballots.
3. If the results from the audit are different from the board's Official Canvass, a "Certified Amended Abstract" report must be filed with the Secretary of State's office. *Note: Our office may order that a complete manual count of all candidate races or question or issue elections appearing on the ballot be conducted if a board's results are considerably different from its Official Canvass results.*

C. Direct Recording Electronic (DRE) Voting Machines:

In accordance with R.C. 3506.18, the voter verified paper audit trail (VVPAT) serves as the official ballot to be audited.

1. Verify VVPAT

- a) The board must randomly select one or more precincts the sum of whose total votes cast equals at least 7% of the total votes cast for the candidate races or question or issue elections being audited.
- b) For each candidate race or question or issue election to be audited, a hand count of the votes cast for each voting unit used in the randomly selected precincts for the audit must be made by physical examination of and hand count of the ballots contained on the VVPAT roll. The hand count must then be compared to the recorded summary that appears at the end of the VVPAT for that candidate race or question or issue election. A record of the comparison must be made for each voting unit. If there is no difference between a hand count and the VVPAT summary, the VVPAT summary shall be presumed to be the accurate count for the voting unit for the candidate's race, question or issue being recounted.
- c) If any comparison of the voting unit's hand count and VVPAT summary results in a difference between the hand count and the recorded summary, it must be determined if a hand counting mistake occurred. If it is determined that no counting mistake has occurred, the hand count of the VVPAT shall be taken to be the accurate count for the voting unit, and the board shall provide written notification to the secretary of state of any such discrepancy occurring between a hand count and the VVPAT recorded summary for a voting unit.

2. The Audit

- a) Check the public counters to verify the numbers on those counters correspond to the numbers on the VVPAT and the poll book, poll list, or signature poll book records.
- b) VVPAT's must be inspected for mutilations and other invalidities.

- c) VVAPT's must be checked for proper candidate, question or issue position and to verify that each candidate's race, question or issue has been properly identified.
- d) The board must randomly select one or more whole precincts, the sum of whose total votes cast equals at least 7% of the total votes cast for the election being audited.
- e) The board must then undertake the following steps in the order listed:
 - 1) Perform a hand count of the VVPAT's in the randomly selected precincts.
 - 2) Compare the totals from the hand counted VVPAT's to the results of the Official Certification.
 - 3) If the Official Certification does not match the hand count with a difference of 2 or less votes, and after rechecking the hand counted results the two results (hand counted and machine tabulated) are still not equal, another 3% of the total votes cast for the election being recounted must be hand counted. The additional 3% must be additional precincts randomly selected using the procedure set forth in Steps 2 through 7 set forth under Optical Scan procedures above, continuing sequentially from the first 7% that was randomly selected for the post election audit. If the hand count and the machine tabulator count are still *not* equal, *all ballots for the candidate's race, question or issue being audited must be hand counted*. If a comparison of the results of the tabulator count and the hand counted ballots in the second batch are equal, and the difference between the hand count and the machine count in the first batch is no more than 2 votes, counties may use the totals from the official canvass for the remaining precincts. Otherwise, all ballots for the candidate's race, question or issue to be audited shall be hand counted.
- 3. If the results from the audit are different from the board's Official Canvass, a Certified Amended Abstract must be filed with the Secretary of State's office. *Note: Our office may order that a complete manual count of all races be conducted if your results are considerably different from your original Official Canvass.*

After Post-Election Audit is Complete

As stated above, the post-election audits may not begin sooner than 5 days after the Official Canvass has been certified. This is to ensure that no written applications for re-counts are received in your county after the auditing process begins. This should also give a Board ample time to provide a public notice of the date, time and place of the audit, by either proclamation or posting of the notice. However, the audit must be completed 15 days after the official canvass has been certified. Any observer who qualified to observe at the board of elections during the election may observe the post election audit.

After you have completed your post-election audit you must file the following with our office:

1. All final results from your audit.

2. *If* vote totals in the random candidate's race, question or issue change, a certified amended abstract that show:

- The votes cast in each precinct in its county in which the candidacy or issue was submitted to electors.
- The votes of the precincts in which the ballots were audited as shown by the audit.

then, the board shall amend its certification of the official results of any race or election so affected and submit it to the secretary of state within the time limits set forth in this directive in the same manner required in the making of its original official declaration of the result of such election.

You may transmit your results to the secretary of state's office via fax at: (614) 752-4360 (If you are sending by fax, please include a cover letter); email to Kathy Malott at: kmalott@sos.state.oh.us or send by certified mail to:

Secretary of State Jennifer Brunner
Elections Division, Attn: Kathy Malott
180 East Broad St., 15th Floor
Columbus, Ohio 43215

If you have any question please contact the Election Division legal staff assigned to your county at (614) 466-2585.

Sincerely,

Jennifer Brunner