

DIRECTIVE 2009-15

September 23, 2009

LUCAS COUNTY BOARD OF ELECTIONS ONLY

Conducting Post-Election Audit for September 15, 2009 Election

To provide transparency of election procedures and to ensure public confidence in the results of the municipal elections held on September 15, 2009, your board is hereby directed to conduct a post-election audit.

POST-ELECTION AUDIT PROCEDURES

The board must conduct a post-election audit as set forth in this directive. The audit shall consist of precincts randomly selected as outlined in this directive and must verify results for the following candidates:

- All candidates for Mayor of Toledo
- All candidates nominated for the Toledo City Council at-large race.

If an automatic recount is to be conducted and held in accordance with R.C. 3515.011 and SOS Directive 2009-07, the post-election audit must be conducted and held at the same time using the same precincts randomly selected for the recount as outlined in Directive 2009-07. In addition to the recount of results for the affected races, the audit conducted at the same time shall verify results for the following candidates:

- All candidates for Mayor of Toledo
- All candidates nominated for the Toledo City Council at-large race

In addition to the precincts randomly selected for the audit or recount, the board shall also include all results from voting machines used at the board of elections' in person absentee voting location (Early Vote Center) and all precincts of Toledo Wards 19 and 20.

If no recount is conducted, the post-election audit is to be held and completed within 10 days after the declaration of the "Official Certification." (If recount is to be conducted, refer to Directive 2009-07 for deadline to hold recount). No audit may be held prior to the official canvass and certification of the election results.

Post-election audits must 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. The post-election audit must be conducted by bipartisan teams. For the purposes of this directive, “bipartisan team(s)” means team(s) having an equal number of members of the major political parties selected by the board of elections.
2. Each bipartisan team must compare the total number of votes cast in the candidate race being audited to the number of voters listed in the poll book, poll list or signature poll book records. These records must be available for visual inspection by observers. The observers shall not be permitted to handle the records.
3. Ballots must be checked for proper candidate position and to verify that each candidate’s race has been properly identified. Observers may observe the inspection of the ballots.
4. 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.
5. Ballots must be handled only by the members of the board of elections, its director, deputy director or other designated employees of the board.
6. The board of elections must randomly select whole precincts whose total equals at least 5% of the total votes cast in the race(s) being audited.
7. The ballots for these precincts must then be hand counted by bipartisan teams.
8. 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 5% of the total votes cast in the election at issue.
 - c. To select the first precinct for the audit, these steps should be followed:

Step 1: Create a numerical or alphabetical list of all precincts in the political subdivision within the race at issue for the audit.

Step 2: Draw, by lot, one of the precincts from the list created in Step 1. The precinct selected in Step 1 is the first precinct included in the hand count for the audit.
 - d. If the precinct selected in Step 2 equals at least 5% of the total votes cast, you are not required to select another precinct for the first hand count for the audit
 - e. If additional precincts are required to reach the 5% threshold, these steps should be followed to select subsequent precincts:

Step 3: Determine the next higher precinct number, letter or combination thereof, if any, after the precinct number selected in Step 2. 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 Step 3 will be the next precinct hand counted for the recount.

Step 4: If the two precincts selected from Steps 1 through 3 do not equal at least 5% of the total votes cast in the election at issue, repeat Steps 2 and 3 using the most recently selected precinct number as the basis for moving sequentially to additional precincts until enough precincts are selected.

B. Optical Scan Ballots:

1. Test the Program

- a. Prepare a test deck of ballots that are pre-marked and hand 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.
- c. The board must use the randomly selected precincts.
- 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.
 - 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 hand counted and machine tabulated results still do not match with a difference of 2 or less votes, another 3% of the total votes cast for the candidate's race being audited must be hand counted. The additional 3% must be additional precincts randomly selected using the procedure set forth in Steps 2 through 3, continuing sequentially from the first 5% that was randomly selected for the post-election audit.
 - a) 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.*
 - b) 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. Otherwise, all ballots for the candidate's race 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 hand 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 use the randomly selected precincts.
 - b. For each candidate race 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. 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 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. VVPAT's must be checked for the proper candidate and to verify that each candidate's race has been properly identified.
 - d. The board must use the randomly selected precincts.

- 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 hand counted and machine tabulated results still do not match with a difference of 2 or less votes, 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 3 set forth under Optical Scan procedures above, continuing sequentially from the first 5% that was randomly selected for the post-election audit.
 - a. 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.*
 - b. 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 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 hand count of all candidate races or question or issue elections appearing on the ballot 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 be conducted prior to the Official Canvass and certification of the election results. This is to ensure that no written applications for recounts are received in your county after the auditing process begins. This should also give the board ample time to provide public notice of the date, time and place of the audit, by either proclamation or posting of the notice. Any observer who was qualified to observe at the board of elections during the election may observe the post-election audit. However, the audit must be completed no later 10 days after the official canvass has been certified.

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 candidate's race change, prepare a certified amended abstract that show:

- The votes cast in each precinct in which the candidacy 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 the race 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 to: (614) 752-4360, including with the fax a cover letter; via email to Kathy Malott at: kmalott@sos.state.oh.us; or via 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 questions, please contact your county's assigned elections counsel at (614) 466-2585.

Sincerely,

Jennifer Brunner