



# The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth  
Elections Division

## Election Advisory #20-11

Regarding Post-Election Ballot Counting

October 23, 2020

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Under the provisions of section 6(h)(3) of Chapter 115 of the Acts of 2020, ballots returned by mail for the state election may be received up to 5pm on November 6<sup>th</sup> if postmarked by November 3<sup>rd</sup>. Existing state law required that mail-in ballots from domestic voters had to be received by the close of polls to be counted and those ballots had to be counted on Election Day. The temporary changes for this year allow for counting of ballots received after Election Day.

The purpose of this Advisory is to provide instruction and best practices with respect to counting ballots after Election Day. This Advisory details the options for counting ballots on Election Day, further guidance on the requirements for counting ballots after Election Day, and information regarding which ballots must still be counted on Election Day. This Advisory makes no changes to the requirements for processing and counting ballots received prior to Election Day.

### **ELECTION DAY BALLOTS**

Due to the expected increased volume of ballots being returned on Election Day, whether in person, by a drop box, or by mail, combined with the anticipated high volume of voters voting in person on November 3<sup>rd</sup>, the Secretary's Office has determined that local election officials need flexibility in counting options to ensure orderly administration of the election. As such, there are three options that each municipality may choose from regarding when and how to count ballots received on Election Day. The local election official must notify the Elections Division of which option they are using no later than Friday, October 30<sup>th</sup>.

#### **OPTION 1: Count All Ballots on Election Day**

Local election officials may opt to count all ballots received on Election Day, similar to previous years. Ballots received on the day of the election by mail, in person, or a drop box must be sent to the precinct to be counted, if time permits. Before any such ballots can be counted, they

must first be processed in VRIS. Ballots that are received by the local election official too close to the close of polls to allow the ballot to be transported to the polling location, can be hand counted in the office and the totals added to those results from each precinct.

If choosing Option 1, all ballots received on Election Day must be counted on Election Day. Local election officials selecting this method must acknowledge that all ballots received on Election Day will be processed in VRIS and sent to the polls for counting if time permits, or counted in the office.

Any ballots postmarked by November 3<sup>rd</sup> and received by mail before 5pm on November 6<sup>th</sup> must be counted in accordance with the post-election counting procedures detailed below.

**OPTION 2: Count Ballots Received Until Specified Time on Election Day**

Local election officials may choose to count ballots received until a designated cut-off time on Election Day and count other ballots using the post-election counting procedures. Ballots received by mail, in person, or by drop box prior to the designated cut-off time must be sent to the precinct to be counted after being processed in VRIS. Ballots received after the cut-off time would NOT be sent to the polls, but would be counted after 5 p.m. on November 6<sup>th</sup> with other ballots, using the post-election counting procedures below.

The local election official must designate the time until which ballots received on November 3<sup>rd</sup> will be counted and notify the Elections Division. The cut-off time may be no later than 6 p.m. on Election Day, however, it may be earlier. When determining the cut-off time, local election officials must consider expected volume, time required for processing returned ballots in VRIS, and the time required to deliver ballots to the polling places. Additionally, officials should consider the expected volume of in-person voters at the polling places during what is usually an evening rush and whether that may impact the ability to process ballots received back on Election Day when determining the cut-off time.

**OPTION 3: Count all Ballots Received on Election Day Post-Election**

Local election officials may choose to count all ballots received by mail, in person, or by drop box on Election Day during the post-election counting process. If using Option 3, ballots returned on Election Day must be counted at the same time as those ballots postmarked on or before November 3<sup>rd</sup> and received by 5 p.m. on November 6<sup>th</sup>. If the local election official selects this option, no ballots received on Election Day would be sent to the polls. This option provides additional time to process ballots received on Election Day in VRIS and allows for the auditing of voting lists to ensure only valid Vote by Mail ballots are counted.

**SENDING BALLOTS TO THE POLLING PLACE ON ELECTION DAY**

If choosing Option 1 or 2, the local election official must send all ballots received on Election Day to the polling location to be counted, but only after processing the ballot as received in VRIS. Once ballots have been delivered to the polling location, they may be processed whenever time permits. An election officer must read the name and address on the envelope distinctly and loudly at the check-in area. The voter's name and address must then be repeated by the

check-in ballot clerk, and the voter must be checked off on the voter list. The letters AV or EV should already appear on the voter list next to the voter's name. The same procedure should occur at the check-out table, if one is being used.

The inner secrecy envelope is then opened, and the ballot is deposited into the ballot box without being examined. The inner envelope must be retained by the poll workers and returned to the local election office with all other election materials at the end of the night.

For local election officials who chose Option 1, ballots received on Election Day without sufficient time to send the ballot to the polls before polls close can be counted in the office of the local election official after the close of the polls. The local election official must then amend the precinct tally sheet, official return book, and checklist returned from the precinct. These ballots must, however, all be counted on Election Day.

### **Central Tabulation Facilities**

Ballots received on Election Day **CANNOT** be sent to a Central Tabulation Facility. If counting ballots on Election Day under Option 1 or 2, ballots received prior to the cut-off or the close of polls (as determined by which option was selected) must be sent to the polls.

### **POST-ELECTION COUNTING: PREPARATION**

Ballots postmarked by November 3<sup>rd</sup> and received by 5 p.m. on November 6<sup>th</sup> are eligible to be counted. Local election offices must be open to accept mail on November 6<sup>th</sup> and officials should coordinate with the local postmaster to ensure timely delivery of ballots prior to 5 p.m. on November 6<sup>th</sup>. After counting is complete on November 3<sup>rd</sup>, **no ballot may be counted until after 5 p.m. on November 6<sup>th</sup>.**

### **Notice Requirements**

Ballots eligible to be counted post-election cannot be counted before November 6<sup>th</sup> at 5 p.m., but they must all be counted prior to certification, which must be done by November 18<sup>th</sup>. Local election officials must publish notice of the counting session including the opening time, date, and location, and provide the notice to the Elections Division at least 3 days in advance.

All ballots must be counted in a continuous session, in advance of the certification deadline. The counting may only be done in an accessible location that has public access. If using a building other than the one where your office is located or where you typically store and process returned ballots, you must transport the ballots and envelopes in sealed containers. It is recommended that a police officer be present during the post-election counting process.

Observers must be allowed to watch the process from behind a guard rail, and can challenge ballots as they are opened. You may require observers to notify you in advance if they wish to attend. If you choose to do so, you must include it in the notice, along with contact information for the observer to notify you. More information regarding observers and challenging ballots can be found in *Advisory 20-10*.

### **Processing Returned Ballots**

Before any ballots received during the post-election period can be counted, they must first be processed in VRIS **and** checked against the voter list used on November 3<sup>rd</sup> to verify that the voter did not cast a ballot in person on Election Day. If a voter has already been processed in VRIS as voting early in-person, VRIS will not allow you to accept another ballot for that voter, however, VRIS is unable to verify whether a voter voted in person on Election Day. Therefore, to make sure that only valid, eligible mail-in ballots are counted, the local election official must compare the mail-in ballot information to the in-person voter list from Election Day prior to accepting the ballot. If the voter previously voted in person either during early voting or on Election Day, their mail-in ballot must be rejected as “ballot already accepted.”

Once a ballot has been determined to be valid, it must be placed in a secure location until such time as ballots received during the post-election period will be counted, which cannot occur until after 5 p.m. on November 6<sup>th</sup>. Ballots counted on Election Day must remain separate from any ballots received during the post-election period.

### **COUNTING BALLOTS AFTER NOVEMBER 6<sup>th</sup> AT 5PM**

The post-election ballot counting process will function similar to a Central Tabulation Facility used on Election Day with names of voters being read from the ballot envelopes, checking those names on a voter list, depositing the ballots into a ballot box or tabulator and thereafter tabulating the votes.

Ballots counted in the post-election process can be hand-counted or processed using a tabulator. Even if the municipality uses a tabulator to count ballots on Election Day, the local election official can opt to hand-count any ballots eligible to be counted during the post-election process. If using tabulators to count ballots, any tabulator used must have been tested as part of the pre-Election Day testing. The tabulator used may be a tabulator used on Election Day and using the same media. The election will need to be reopened on the tabulator in order to continue counting ballots.

### **Opening the Pre-Counting Location**

Before any ballots are processed, the ballot box must be opened to show there are no ballots contained therein. A record must be made of the number of ballot envelopes delivered to the location for counting. If any ballots are rejected during the post-election counting process, this number should also be recorded.

### **Voter List**

To ensure that only valid ballots are counted during the post-election process, the voter list from Election Day must be used during the post-election process.

This will ensure that voters whose mail-in ballot was received by mail after Election Day but already voted in person are not counted. Further, it will allow for the counting of ballots who have since made changes to their registration. Voters who were on the voter list as of Election

Day who re-register or update their information after Election Day will not appear if a new list is printed. Accordingly, the Election Day list must be used for post-election counting.

Before the post-election counting process begins, the voter list from Election Day must be compared to any lists from advance removal and depositing or used at a Central Tabulation Facility to verify that any voter checked off on one list is checked off on the other. This should be done between Election Day and 5 p.m. on November 6<sup>th</sup>.

Before ballots are removed from their envelopes, the name and address of the voters must be read aloud and checked on voter list. When marking the voting list, a different color pen or other marking should be used to distinguish voters whose ballots are counted during the post-election process. If the voter has already been marked as having voted on the voter list, the ballot must be rejected. If a ballot is rejected, the word "rejected" must be written on the envelope and that envelope placed in a secure container for rejected ballots.

#### **Post-Election Counting: Paper Ballots or Hand-Counting Scan Ballots**

If hand-counting paper ballots or scan ballots during the post-election tabulation, at least two election workers are required. While there are no requirements for those election workers to be of different political parties, it is recommended that you avoid having both workers be enrolled in the same party if possible. Any election worker participating in the post-election tabulation process should be given the same oath as regular Election Day poll workers.

Ballots must be processed by precinct. After the ballot envelopes have been checked against the voter list, the ballot must be removed from the envelopes without being examined and in a manner to preserve the secrecy of the ballot to the extent possible. One precinct must be completed before processing another. For each precinct, the ballots must be put into packs of 50 for counting. One election worker reads the name of the office and who the vote is for, while the other records those votes on a tally sheet. A new tally sheet should be prepared for post-election counting for each precinct. Only red pens or pencils should be used to mark the tally sheet. Once the ballots are counted for each precinct, the election workers must read the results aloud, but should clearly state that they are unofficial results only.

#### **Post-Election Counting: Digital or Optical Scan Tabulation**

When using a tabulator for post-election tabulation, at least two election workers are required to process the ballots. While there are no requirements for those election workers to be of different political parties, it is recommended that you avoid having both workers be enrolled in the same party if possible. Any election worker participating in the post-election tabulation process should be given the same oath as regular Election Day poll workers.

Ballots must be processed by precinct. After the ballot envelopes have been checked against the voter list, the ballots must be removed from the envelopes without being examined and in a manner to preserve the secrecy of the ballot to the extent possible. The ballots must then be deposited into the tabulator. Ballots must be processed by precinct. One precinct must be completed before processing another precinct.

The tabulators and program cards used on Election Day can be used during the post-election process. There are different ways in which the program cards can be re-used, either by starting the count again

or continuing the count from after the polls closed. When continuing the count, a comparison must be made to the results printed on election night from the tabulator. Further, any adjustments made including adding in hand counts and write-in votes that were done on Election Night must be accounted for and reconciled during the post-election tabulation process. If starting the count again, a copy of the Election Day programming and results must be maintained. Specific technical instructions on using the tabulators should be provided by the appropriate voting equipment vendor.

Any ballot that cannot be read or is rejected by the tabulator must be set aside and hand-counted in accordance with 950 CMR 54.06(9) after all ballots for that precinct have been deposited and before the close of post-election counting.

Any ballots with a write-in vote must be hand-counted in accordance with 950 CMR 54.06(9) after all ballots for that precinct have been deposited and before the close of post-election counting. All hand-counts for a precinct must be done before moving on to the next precinct. A separate tally sheet must be made for each precinct.

After ballots for a precinct are deposited, the tape must be printed and signed by the election workers. The results must be read aloud, but it must be stated that they are unofficial results. The totals from the hand-counted ballots must then be added to the totals on the tape, recorded on a total tally sheet and read aloud. Ballots must then be removed from the ballot box and sealed. Ballots from each precinct must be tabulated and sealed separately.

### **Multiple Tabulators**

More than one tabulator can be used to process multiple precincts simultaneously using additional teams of election workers. Each precinct must have a separate team of poll workers, a separate tabulator, and enough space to separate from the other precinct(s) to ensure there is no comingling of materials. Each team must complete their own precinct before that team can use the machine to process another precinct.

### **Challenge Process**

Post-election tabulation must be open to observers to challenge post-election ballots. Any challenge can only be made when the name and address of the voter is being read from the envelope and recorded on the voter list. Ballots being counted after Election Day can be challenged for any legal cause in accordance with the process set forth in Advisory #20-10.

### **Results**

The results of post-election tabulation must be read aloud for any observers, but the results must be clearly stated are unofficial.

### **CERTIFYING ELECTION RESULTS**

Election results must be certified locally no later than November 18<sup>th</sup>. Before results can be certified, election officials must complete the post-election counting process, resolve and count provisional ballots and count ballots including Federal Write-In Absentee Ballots (FWABs) returned from military and voters mailed from outside of the United States that are postmarked on or before November 3<sup>rd</sup> and received no later than November 13<sup>th</sup>.

Ballots, including FWABs, mailed from out outside of the United States that are postmarked on or before November 3<sup>rd</sup> and received no later than November 13<sup>th</sup> must be counted at a meeting of the Board of

Registrars or Election Commissioners. These ballots **CANNOT** be counted before 5 p.m. on November 13<sup>th</sup>. If post-election tabulation is completed prior to that, the results of the election cannot be final until after 5 p.m. on November 13<sup>th</sup>.

**The results cannot be final and the election cannot be certified until after 5 p.m. on November 13<sup>th</sup> when there is no further possibility of receiving a valid overseas ballot AND until after all provisional ballots have been resolved.**

**QUESTIONS?**

Contact the Elections Division at 617-727-2828 or [elections@sec.state.ma.us](mailto:elections@sec.state.ma.us).