



The Commonwealth of Massachusetts

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Elections Division

Election Advisory #22-08

Election Day Options and Post-Election Tabulation
For the November 8, 2022 State Election Only

October 28, 2022

Under the provisions of General Laws chapter 54, section 25B(a)(14), as amended by section 10 of chapter 92 of the Acts of 2022, state election ballots returned by mail from within the US may be counted if postmarked by Election Day and received by 5pm on the third day after the Election. For the 2022 State Election on November 8th, since the third day after the election is a holiday, the deadline for ballots to be received will instead be 5pm on Saturday, November 12th.

This Advisory provides the deadlines for all ballot return methods for the state election, as well as instructions and best practices for counting ballots on Election Day. It also details options for counting ballots on Election Day. The Advisory includes further guidance on which ballots must be counted on Election Day and which can be counted after. This Advisory makes no changes to the requirements for processing and counting ballots received prior to Election Day.

Please note this Advisory applies **only** to biennial state elections.

DEADLINES TO RECEIVE BALLOTS

The deadline to return a ballot depends on the type of ballot and the return method.

Ballots Returned Electronically

Any ballots returned electronically must be received by 8pm on Election Day (close of polls) to be counted. This includes UOCAVA ballots returned by email or fax, as well as Accessible Vote by Mail ballots. Federal Write-In Absentee Ballots sent by email or fax must also be received by 8pm on Election Day to be counted. For the 2022 state election, all ballots returned electronically must be received by the local election official by 8pm November 8th.

Ballots Returned In Person or by Drop Box

Ballots returned by drop box, in person, or by hand delivery must be received by 8pm on Election Day (close of polls). Local election officials must arrange to have any drop boxes emptied at precisely 8pm on Election Day. For the 2022 state election, all ballots returned by drop box, in person, or by hand must be received by 8pm November 8th.

Ballots Returned by Mail

Ballots returned by mail from within the United States must be postmarked on or before Election Day and received by 5pm on the third day after the election to be counted. For the 2022 state election, since the third day is a holiday, ballots sent by mail within the US must be postmarked on or before November 8th and received by 5pm Saturday, November 12th to be counted. Ballots received after Election Day but before 5pm November 12th will be counted in accordance with the post-election tabulation process as described in this Advisory.

Ballots (including Federal Write-In Absentee Ballots) returned by mail from outside the United States must be postmarked on or before Election Day and received by 5pm on the 10th day after the election to be counted. For the 2022 state election, ballots must be postmarked on or before November 8th and received by 5pm on November 18th to be counted. These ballots must be counted at a duly posted meeting of the Board of Registrars held after 5pm on November 18th.

COUNTING OPTIONS FOR BALLOTS RECEIVED ON OR BEFORE ELECTION DAY

Local election officials will be able to choose between three options for counting ballots received on Election Day, as described below. Local election officials must notify the Elections Division of which option they will be using no later than the Friday, November 4 at 5pm.

Option 1: Count All Ballots on Election Day

This option requires all ballots received on Election Day to be counted on Election Day, similar to previous years. If choosing this option, ballots received on the day of the election by mail, in person, or a drop box would have to be sent to the precinct to be counted, if time permits. Before these ballots can be sent to the polls, they first must be processed in VRIS. Remember, ballots can be sent to the polling place up until one hour after the close of polls for processing.

Ballots received too close to the close of polls to allow the ballot to be transported to the polling location would need to be hand counted in the office after the close of polls, and the totals would then be added to the precinct results. However, those ballots cannot be counted until after the voting lists from the appropriate precinct are returned to the election office and cross-referenced to make sure the voter did not vote in person on Election Day.

Option 2: Count Ballots Received Until Specified Time on Election Day

Local election officials can also choose to count ballots received on Election Day until a specified cut-off time on Election Day. Ballots received after the specified cut-off time would be counted during post-election tabulation. With this option, ballots received by mail, in person, or by drop box prior to the designated cut-off would be sent to the precinct to be counted, but only after

being processed in VRIS. Ballots received after the cut-off time would NOT be sent to the polls, but would instead be counted after 5pm on November 12th with other ballots using the post-election tabulation procedures.

The local election official would need to designate the cut-off time until which ballots received on November 8th will be counted on Election Day and notify the Elections Division of the cut-off time. The cut-off time may be no later than 6pm on Election Day, however, it could be earlier. When determining the cut-off time with this option, local election officials should consider expected volume, time required for processing returned ballots in VRIS, and the time required to deliver ballots to the appropriate precincts. Additionally, officials should consider the expected volume of voters at the polling places on Election Day during what is usually an evening rush, and whether that will impact the ability to process ballots received on Election Day when determining the cut-off time.

Option 3: Count All Ballots Received on Election Day Post-Election

Local election officials may also choose to count all ballots received on Election Day by mail, in person, or drop box after Election Day during the post-election tabulation process. Under this option, ballots returned on Election Day would be counted at the same time as ballots postmarked on or before November 8th and received by 5pm on November 12th. 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 in VRIS.

SENDING BALLOTS TO THE POLLING PLACE ON ELECTION DAY

If choosing Option 1 or 2, all ballots received on Election Day (Option 1) or ballots received on Election Day prior to the designated cut-off time (Option 2) will be sent to the polling location to be counted. **All ballots must be processed as received in VRIS before being sent to the polls.** Once ballots are 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. Those ballots cannot be counted until after the voting list for the appropriate precinct are returned to the election office and cross-referenced to make sure the voter did not vote in person on Election Day. 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 returned by mail from within the US that are postmarked by November 8th and received by 5pm on November 12th are eligible to be counted. Local election officials should coordinate with their post office to ensure delivery of any ballots before 5pm November 12th. Once counting has been completed on November 8th, no ballots may be counted (except for provisional ballots) until after 5pm November 12th.¹

Processing Returned Ballots

Before any ballots can be counted during post-election tabulation, they must first be processed in VRIS **and** checked against the voter list used on November 8th to verify that the voter did not cast a ballot in person on Election Day. If the voter has an accepted ballot for in-person early voting already entered into VRIS, 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 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 used on 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” and the word “rejected” must be written on the ballot envelope. That ballot must remain sealed in its envelope and kept with other rejected ballots for the appropriate retention period.

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 12th. Ballots counted on Election Day must remain separate from any ballots received during the post-election period.

Preparing the 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 tabulation process. This will ensure that if a mail-in ballot is received by mail after Election Day for a voter who already voted in person, the mail-in ballot will not be counted. Further, it will allow for the counting of ballots for voters who have since made changes to their voter 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. However, voters who were on the voter list on Election Day are eligible to have their mail-in ballots counted. Accordingly, the Election Day list must be used for post-election counting.

¹ While provisional ballots can be counted during the period after Election Day and before post-election tabulation, we recommend waiting to count eligible provisional ballots as part of the post-election tabulation process.

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 12th.

Scheduling the Post-Election Tabulation Session

Ballots eligible to be counted post-election cannot be counted before 5pm November 12th, but they must all be counted prior to certification of the election, which must be done by November 23rd. It is not required for the local election official to count the ballots at 5pm November 12th, although they may choose to do so. All ballots must be counted in a continuous session, in advance of the certification deadline.

Post-election counting can only be done in an accessible location with public access. If the counting session is in a building other than where the ballots are typically stored or processed, the local election official 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 guardrail and can challenge ballots as they are opened.

Local election officials must publish notice of the counting session, including the opening time, date, and location on their website and provide notice to the Elections Division at least three days in advance.

POST-ELECTION COUNTING: PROCESS

The process for counting ballots after Election Day is similar to the process used at a Central Tabulation Facility 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. Specific questions regarding this process should be directed to the voting equipment vendor.

Opening the Pre-Counting Location

Before any ballots are processed, the ballot box must be opened to show there are no ballots contained therein. Similar to Election Day, a record of the event must be kept. This includes the time of opening, the election workers present, and 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. Any challenges must also be recorded. Any election worker participating in the post-election tabulation process should be given the same oath as regular Election Day poll workers.

Processing Ballots

At least two election workers are required to process 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.

Before the ballots are removed from their envelopes, one election worker must read the name and address of the voter aloud. The other election worker must then mark the voter list using a different color pen than used on Election Day 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 by having the word “rejected” written on the envelope and placing the envelope in a secure container for rejected ballots.

The election worker would then remove the ballot from the envelope without examining the ballot and in a manner to preserve the secrecy of the ballot to the extent possible. All envelopes must be kept and returned to the local election official’s office after the post-election tabulation process is complete. After the ballot is removed from the envelope, it will be hand-counted or put into the tabulator, depending on how the local election official chooses to count the ballots.

Hand-Counting Paper Ballots or Scan Ballots

Before ballots can be hand counted, a tally sheet must be prepared listing each office, all candidates for each office, blanks and write-ins as well as all questions appearing on the ballots. Ballots must be processed by precinct and 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 the tally sheet. The election workers must also state “blank” if a voter has not marked a vote indicator for a candidate. Each ballot questions should be recorded as “yes,” “no” or “blank.” 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.

Digital or Optical Scan Tabulation

Ballots must be processed by precinct and deposited into the tabulator. Unless using multiple tabulators, 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 to reuse the cards, by either starting the count again or continuing the count from when polls closed on Election Day. 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 hand counts and write-in votes 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 on which write-in votes and hand counted ballots are recorded.

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

Similar to Election Day, observers can challenge ballots being counted during the post-election tabulation for any legal cause. 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.

Storing Ballots

Ballots from each precinct must be sealed separately. Ballots counted during post-election tabulation must also be sealed separate from Election Day ballots. Election Day ballots counted at the polls on Election Day must be sealed at the polling place and cannot be unsealed in order to add the post-election ballots.

Results

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

PROVISIONAL AND UOCAVA BALLOTS

Counting Provisional Ballots

Provisional ballots for the state election must be resolved within 12 days of the election. On or before the fifteenth after the state election, local election officials must report the disposition of **all** provisional ballots in VRIS.

If a voter flagged to show ID due to HAVA does not provide valid identification when voting, the voter must vote provisionally. In order for their provisional ballot to count, the voter must provide a copy of their identification no later than 5pm on November 12th. Similarly, if a voter voting by mail who is flagged to show ID does not provide a copy of their ID by 5pm on November 12th, their ballot cannot be counted.

Counting FWABs and Ballots Mailed from Outside the US

FWABs and ballots mailed by voters from outside the US that are postmarked by November 8th and received by 5pm on November 18th must be counted at a duly posted meeting of the Board of Registrars or Election Commissioners. These ballots **CANNOT** be counted before 5pm on November 18th.

If the election results are certified in VRIS after the post-election tabulation but before the UOCAVA deadline, the election will have to be uncertified and results amended if any eligible ballots from UOCAVA voters are received.

CERTIFYING ELECTION RESULTS

Election results must be certified locally by November 23rd. Prior to certifying the results, all ballots must be counted, including the post-election tabulation, resolving and counting provisional ballots and counting ballots (including FWABs) mailed from outside the US that are postmarked on or before November 8th and received no later than November 18th.

Final Tally of Election Results

After receiving all results, the local election official will need to create a final tally by precinct that includes all tallies from all locations, namely:

- Election Day precinct total tallies
- Advance deposit tallies
- Central tabulation facility tallies
- Hand counts from ballots counted in the local election official's office
- Post-election tabulation tallies
- Provisional ballot counts
- UOCAVA and FWAB counts

After creating the final tally of votes, you must review it for accuracy before certifying the election.

Reporting Election Results

Election results for the state election must be reported to the Elections Division using VRIS. The results must be entered in VRIS, then printed, signed, and mailed to the Elections Division. The report must be postmarked by November 23rd, within 15 days of the election.

For municipalities with county commissioners on their ballot, the results for that office must be reported to the Board of Examiners, which consists of the judge and register of the probate court and the clerk of courts. Regional School Committee results are reported to the district clerk, who will tabulate the results and certify the winners.

QUESTIONS?

Contact the Elections Division at 617-727-2828 or elections@sec.state.ma.us.