

## **950 CMR 46.00: POST-ELECTION AUDIT PROCEDURES**

### **46.01 General Provisions**

- (1) Definitions. Terms shall have the meanings provided in M.G.L. c. 50, § 1. In addition:
- (a) Audited Precinct shall mean any precinct selected under 109A(c) of chapter 54 to be audited.
  - (b) Local Election Official shall mean a city or town clerk, members of the boards of registrars or election commissioners.
  - (c) Secretary shall mean the Secretary of the Commonwealth or his or her designee.
- (2) Application. The procedures set forth in 950 CMR 46.01 through 46.09 shall apply to the administration of audits conducted following any presidential general election, except to the extent provided otherwise.
- (3) Effective Date. 950 CMR 46.01 through 46.09 are effective as soon as publication occurs in the Massachusetts Register, under M.G.L. c. 30A, § 6.
- (4) Amendment. These chapters may be amended at any time in the manner provided by law. Any interested person may petition the Secretary requesting the adoption, amendment, or repeal of any regulation, under M.G.L. c. 30A, § 4. This petition shall be considered by the Secretary within 30 days after filing.
- (5) Authority. These chapters are promulgated under authority of M.G.L. c. 54, § 109A.

### **46.02: Scope of Audit**

- (1) Each precinct selected pursuant to 109A(c) of chapter 54 shall conduct a hand-counted audit of votes cast on the day of election of:
- (a) the following races in which more than 1 candidate's name appears on the ballot:
    - (i) president and vice president;
    - (ii) representative in congress;
    - (iii) senator in congress;
    - (iv) representative in the general court;
    - (v) senator in the general court; and
  - (b) one statewide ballot question, if any appear on the ballot, chosen by random drawing.
- (2) If a valid petition for a recount is made pursuant to section 135 of chapter 54 for a race subject to audit by section 109A of chapter 54, then the votes for that race shall not be audited in any precinct named in the petition; provided, however, that if an audit has commenced in a precinct

where the valid petition for a recount is made, the audit in the precinct shall be stopped. The audit of the race in question shall proceed in any precinct selected pursuant to 109A(c) of chapter 54 not included in the petition for a recount.

**46.03: Selection Process and Notification**

(1) The precincts to be audited shall be chosen in a random, publicly verifiable, non-computerized drawing supervised by the Secretary within 48 hours after polls are closed.

(2) Notice of the time and place of the drawing shall be given at least 10 days before the election on the electronic website of the Secretary.

(3) The drawing shall be fully observable to the public and representatives of each political party and shall use a procedure that can be easily understood to be random.

(4) The number of precincts selected to be audited in this drawing shall be equal to 3 per cent of all precincts in the commonwealth, rounded up to the next highest whole number.

(5) As soon after the drawing as is practicable, the Secretary shall notify the municipalities where 1 or more precincts have been selected to be audited and post the selected precincts on the website of the Secretary.

**46.04: Administration of Audit**

(1) Notice. The time and place of the audits in a municipality where 1 or more precincts selected to be audited are located shall be publicly announced no less than 24 hours prior to the commencement of the audit.

(a) The local election official shall notify the Secretary of the time and place of the audit no less than 24 hours prior to the commencement of the audit.

**46.05: Conduct of the Audit**

(1) Selected Precincts. The board of registrars or election commission in a municipality where 1 or more precincts selected to be audited are located shall conduct the audit.

(a) The board of registrars or election commission may employ tally clerks to count the ballots.

(2) Timing. Audits shall begin not later than 2 business days following the random drawing of precincts and shall continue on each successive business day or other day at the discretion of the board or commission in each municipality.

(3) Location. The audits shall be shall be performed:

(a) In an accessible location; and

(b) In full public view.

(4) Prior to the beginning of the audit, the local election official shall deliver to the audit location the envelopes or containers containing all records of the election, including the sealed envelopes containing the ballots cast, the original tally sheets, the envelopes containing the spoiled and unused ballots, the voting lists used at the election, the certificates issued to voters omitted from the voting list, the precinct clerk's election record, the absentee ballot envelopes and applications for such absentee ballots as were cast at the election, the lists of voters who were sent absentee ballots with the notation as to whether such ballots were cast or rejected or whether such voter voted in person, the early ballot envelopes and applications for early voting ballots by mail as were cast at the election, the lists of voters who were sent early voting ballots with the notation as to whether such ballots were cast or rejected or whether such voter voted in person at an early voting location or by mail, and the sealed envelopes containing the ballots rejected as defective.

(5) To conduct the audit, the board or commission shall unseal the envelopes or containers containing the ballots.

(a) Ballots for an audited precinct shall be separated into blocks of 50.

(b) Blocks of ballots shall be audited by a team of two (2) workers, both of whom shall view each ballot. One worker shall read the votes, and the other shall record the votes on a tally sheet. Only the worker actually marking the tally sheet shall have any marking device, which must be a red pencil or red pen.

(c) Each team shall receive a block of ballots, the corresponding block tally sheet, and an envelope. The block tally sheet and envelope shall be marked with a block number.

(d) Tellers shall count each audited office and ballot question in its entirety before proceeding to the next ballot. They shall begin with the office at the top of the ballot, reading aloud the names of the candidates selected by the voter. They shall continue reading each office aloud in turn in the order in which they are printed on the ballot and proceed to the selected ballot question, if any. They shall count all offices on one ballot and then proceed to the next. They shall keep the ballots in the order counted.

(6) Methods of Recording Votes: Two suggested methods of tallying are:

(a) Tellers shall use red pencil or red pen. A teller shall read ballot # 1 and a marker shall record all voters for selected candidate or blank in column #1. A teller shall read ballot # 2 and a marker shall record the vote in the first vacant consecutive space on the tally sheet for that candidate. Counting shall continue one ballot at a time working to the right using consecutive boxes as selected candidates are called until the entire stack of ballots is completely tallied.

(b) Tellers shall use red pencil or red pen. A teller shall record votes in the space corresponding to the order in which the ballot appears in the block. A teller shall read ballot # 1, and a marker shall record all votes for selected candidates or blanks in column # 1. A teller shall read ballot # 2 and a marker shall record all votes for elected candidates or blanks in column # 2. Counting shall continue one ballot at a time working to the right using the box corresponding to the order of the ballot within the block.

(c) If a voter does not cast a vote for a candidate or question, that vote for that office or question is tallied as a blank. If the voter has marked more than one vote indicator for any office or question, the vote for that specific office or question is tallied as an overvote. Each vote for an office shall be recorded either in a candidate space, a space for blanks or an overvote space on the tally sheet. Each vote for a ballot question shall be recorded either in a yes space, a no space, a blank space or an overvote space on the tally sheet.

(7) Voter intent shall be the standard for counting votes.

(a) If the marks on the ballot fairly indicate the voter's intent, the vote should be counted in accordance with that intent, as long as the voter has essentially complied with the election laws. If the ballot is marked in a way that leaves the intent of the voter unclear, the vote should not be counted and tallied as a blank.

(b) Individuals charged with tabulating votes during the audit shall disregard the omission or inaccuracy of initials, the omission, inaccuracy or misspelling of given names and the misspelling of surnames if the intent of the voter to express a preference for any particular individual can be ascertained.

(c) Individuals charged with tabulating votes during the audit shall record the number of votes for each contest for which voter intent is discernible but that are not marked by the voter according to the instructions provided to the voters under section 48 of chapter 54. They may include additional explanatory notes related thereto including, but not limited to, the way in which the markings for candidates and questions on the ballot were made.

(d) If the tally clerk is unable to determine the intent of the voter, the board of registrars shall decide the intent.

(8) After the block has been counted and tallied, the tellers shall record the total number of tally marks in each line for each candidate for each office. They shall total all candidate votes, blank votes and overvotes in each office and for the selected ballot question.

(9) The votes for each candidate and office shall be counted, tabulated and entered on official audit report forms provided by the Secretary.

#### **46.06: Post-Audit Procedures**

(1) When the audit is complete, the board or commission shall enclose all the ballots in their proper envelopes or containers, secure each envelope or container with a seal and certify upon each envelope or container that it has been opened and again sealed in conformity to law.

(2) Upon completion of the audit in each municipality, the board of registrars or election commission shall record each race audited in each precinct on a separate audit report form provided by the Secretary.

(3) The registrars or commissioners shall submit the completed audit report forms to the Secretary not later than 14 calendar days following the election.

(4) An audit report form shall provide for the entry of:

- (a) the number of votes for each candidate or each yes and no vote and the blank votes and overvotes as recorded in the audit hand count;
- (b) the election night tallies reported for each candidate or each yes and no vote and the blank votes for the same ballots that were counted in the audit;
- (c) the differences between the audit hand count results and the election night tallies for each candidate, yes and no question and blank votes excepting the overvotes;
- (d) the number of votes for each contest for which voter intent is discernible but that are not marked by the voter according to the instructions provided to the voters under section 48 of chapter 54 and any explanatory notes related thereto; and
- (e) any additional notes on perceived causes of discrepancies.

#### **46.07: Post-Audit Amendment**

If there is a discrepancy between the results reached pursuant to an audit and originally reported tallies, the hand count of the official paper ballots conducted pursuant to the audit shall be the official vote of record and the board of registrars or election commission shall amend each precinct tally sheet, official return book and check list delivered to the office of the registrars.

#### **46.08: Possible Additional Audits**

(1) If there is a discrepancy between the results reached in a precinct pursuant to an audit and the originally reported tallies in that precinct in any audited race or any audited ballot question that reasonably leads to doubt about the outcome of the election or systemic failure to accurately count ballots, the Secretary may order audits of additional precincts, offices or ballot questions as shall be necessary to ensure that the outcome of the election is accurate and that the cause of the systemic failure is identified.

(2) Any additional precinct audits ordered by the Secretary shall be performed and completed according to a schedule and notice set by the Secretary and conducted in the same manner set out in these regulations.

#### **46.09: Audit Reports**

(1) Upon receipt of the results of the audit, the Secretary shall make information in the audit reports publicly available on a precinct-by-precinct basis as soon as practicable, but not later than 10 days after receipt of the audit report form, in both human and machine readable formats, such as a spreadsheet or comma-separated-value file.

(a) This information shall also be posted on the electronic website of the Secretary.

(2) The Secretary shall publish the results of the audit in the report required by section 133 of chapter 54 or in some other document in which the results of the audit may easily be compared

with the number of votes originally reported for each candidate for election for which an audit was conducted in accordance with law.

(3) The audit and publication of the results shall be completed prior to the time the commonwealth shall make a final determination concerning the appointment of its presidential electors.