

DIRECTIVE 2008-106

October 31, 2008

TO: ALL OHIO COUNTY BOARDS OF ELECTIONS USING ES&S MODEL 100 OPTICAL SCANNERS AS THE COUNTY'S PRIMARY VOTING SYSTEM

RE: Instructions for Processing and Scanning Optical Scan Regular Ballots Placed in the Emergency/Auxiliary Ballot Bin

There are two different reasons a board of elections using ES&S Model 100 optical scanners utilizes the emergency/auxiliary ballot bin in a precinct voting location:

1. For secure storage of provisional ballots voted during Election Day at the precinct prior to 7:30 p.m.
2. For secure storage of regular ballots when the M-100 optical scanner is not working due to equipment problems or a sustained electrical outage.

Upon discussion with various boards of elections, we have just learned that counties have been handling the processing and scanning of optical scan regular ballots placed in the emergency/auxiliary ballot bin by differing methods, and this may affect actual vote tallies. When a poll worker is instructed to process and scan these ballots at the precinct level using the precinct based scanner after the close of the polling place, the issue arises as to how to handle an overvote alert. **Only a voter can override an overvote alert.** Therefore, optical scan regular ballots that are placed in the emergency/auxiliary ballot bin, must be transmitted to the board of elections to be centrally scanned so that any overvotes may be processed according to instructions for determining voter intent rather than to assume that an overvote alert is an actual overvote that must be overridden, causing a vote on a particular office or issue to not be counted.

This directive is being issued to clarify certain procedures boards of elections should follow when utilizing the emergency/auxiliary ballot bin in a precinct voting location.

I. SECURE STORAGE OF PROVISIONAL BALLOTS VOTED DURING ELECTION DAY

Some boards of elections utilize the emergency/auxiliary ballot bin for secure storage of provisional ballots voted at the precinct on Election Day by voters who have appeared by the time the polls close. In those counties, the ballot bin slot on the front of the ballot bin is left

open all day, and poll workers instruct voters to place their provisional ballots sealed in a provisional ballot envelope into the emergency/auxiliary ballot bin slot.

However, because the bin slot is open all day, a voter may inadvertently place a regular optical scan ballot in the emergency/auxiliary ballot bin slot instead of scanning the ballot without a poll worker's knowledge.

Poll workers must be instructed to check the emergency/auxiliary ballot bin as part of the closing of the polls. If any regular optical scan ballots are found in the emergency/auxiliary ballot bin, then the number of these ballots must be tallied and they must be kept segregated from all other ballots.

Poll workers must follow the reconciliation procedures for ballots placed in the emergency/auxiliary ballot bin stated in Section III, below, after closing the polls.

II. SECURE STORAGE OF REGULAR BALLOTS WHEN THE M-100 IS NOT WORKING DUE TO EQUIPMENT PROBLEMS OR SUSTAINED POWER OUTAGE

In the event of equipment problems or a sustained power outage that results in the M-100 optical scanner not working, poll workers should first contact the board of elections about the problem in accordance with instructions given by the board of elections during poll worker training and in Election Day poll worker materials.

A. In counties that utilize the emergency/auxiliary ballot bin for provisional ballot storage:

In addition to having voters place their provisional ballots in the slot for the emergency/auxiliary ballot bin, poll workers should instruct voters to place their voted regular optical scan ballots in the same slot until the M-100 optical scanner is functioning again, has been replaced or the time for closing of the polls has arrived without the M-100 optical scanner being returned to working condition.

If the M-100 optical scanner is not working for a sustained period of time, then a bipartisan team of poll workers should check the emergency/auxiliary ballot box at regular intervals determined by the board of elections to ensure that the bin is not full. These checks should be done frequently when the bin is also utilized for secure storage of provisional ballots. In the event that the bin is at or near capacity, then **each time** that it is necessary to transfer ballots the bipartisan team of poll workers shall do all of the following:

1. Empty the emergency/auxiliary ballot bin of all ballots, including regular optical scan ballots and provisional ballots in provisional ballot envelopes (if applicable) into a secure container designated for such purpose;

2. Document the time of the removal of all ballots from the emergency/auxiliary ballot bin and the number of regular optical scan ballots and the number of provisional ballots (if applicable) removed from the bin;
3. Segregate the regular optical scan ballots from all other ballots in a secure container to ensure that regular optical scan ballots that were placed in the emergency/auxiliary ballot bin are not mixed in with other regular optical scan ballots that have already been scanned; and
4. Record the names and signatures of the poll workers from the bipartisan team involved in the transfer of ballots in the poll book or on a form provided by the board of elections.

Poll workers may place ballots removed from the emergency/auxiliary ballot bin in the “overflow” ballot box or secure container described in Directive 2008-86. However, regular optical scan ballots and/or provisional ballots from the emergency/auxiliary ballot bin **MUST BE SEGREGATED IN SOME MANNER** if they are placed in the “overflow” ballot box or secure container so that they are **not mixed in with already scanned regular optical scan ballots**.

Also, every time the “overflow” ballot box or secure container is opened to place additional ballots from the emergency/auxiliary ballot bin in the container, a new lock or seal must be placed on the “overflow” ballot box or secure container, and the number of the lock or seal, and the names and signatures of the bipartisan team of poll workers who transferred the ballots must be recorded.

Poll workers must follow the reconciliation procedures for ballots placed in the emergency/auxiliary ballot bin stated in Section III, below, after closing the polls.

B. In counties that do not utilize the emergency/auxiliary ballot bin for provisional ballot storage:

Poll workers should check the emergency/auxiliary ballot bin before using it to ensure that no ballots are in the emergency/auxiliary ballot bin. This should be done even if the poll workers previously checked the emergency/auxiliary ballot bin when setting up the M-100 optical scanner before opening the polls.

Poll workers should then follow the board of elections’ and manufacturer’s instructions for unlocking and opening the emergency/auxiliary ballot bin slot on the front of the ballot bin.

After opening the slot and locking the bin door back, poll workers should instruct voters to place their voted regular optical scan ballots in the slot for the emergency/auxiliary ballot bin until the M-100 optical scanner is functioning again, has been replaced or the time for closing of the polls has arrived without the M-100 optical scanner being returned to working condition.

If the M-100 optical scanner is not working for a sustained period of time, then a bipartisan team of poll workers should check the emergency/auxiliary ballot box at regular intervals determined by the board of elections to ensure that the bin is not full. In the event that the bin is at or near capacity, then **each time** that it is necessary to transfer ballots the bipartisan team of poll workers shall do all of the following:

1. Empty the emergency/auxiliary ballot bin of all ballots into a secure container designated for such purpose;
2. Document the time of the removal and the number of regular optical scan ballots removed from the bin;
3. Segregate and ensure that regular optical scan ballots that were placed in the emergency/auxiliary ballot bin are not mixed in with other regular optical scan ballots that have already been scanned; and
4. Record the names and signatures of the poll workers from the bipartisan team involved in the transfer of ballots in the poll book or on a form provided by the board of elections.

Poll workers may place ballots removed from the emergency/auxiliary ballot bin in the “overflow” ballot box or secure container described in Directive 2008-86. However, regular optical scan ballots from the emergency/auxiliary ballot bin **MUST BE SEGREGATED IN SOME MANNER** if they are placed in the “overflow” ballot box or secure container so that they are **not mixed in with already scanned regular optical scan ballots**.

Also, every time the “overflow” ballot box or secure container is opened to place additional ballots from the emergency/auxiliary ballot bin in the container, a new lock or seal must be placed on the “overflow” ballot box or secure container, and the number of the lock or seal, and the names and signatures of the bipartisan team of poll workers who transferred the ballots must be recorded.

Poll workers must follow the reconciliation procedures for ballots placed in the emergency/auxiliary ballot bin stated in Section III, below, after closing the polls.

III. RECONCILIATION PROCEDURE FOR UNSCANNED BALLOTS PLACED IN THE EMERGENCY/AUXILIARY BALLOT BIN AND SCANNING PROCEDURE

All unscanned regular optical scan ballots that were placed in the emergency/auxiliary ballot bin, whether due to the M-100 optical scanner not working or due to a voter inadvertently placing a ballot in the emergency/auxiliary ballot bin slot instead of scanning the ballot, must be reconciled with the poll books during the reconciliation process after the closing of the polls.

All unscanned regular optical scan ballots that were placed in the emergency/auxiliary ballot bin must remain segregated after reconciliation and must be transported to the board of elections after the close of the polls for central scanning as part of the unofficial canvass.

The regular optical scan ballots that were placed in the emergency/auxiliary ballot bin may not be scanned at the precinct, because voters were not given the opportunity to make the decision whether or not to override the overvote alert. Thus, these ballots must be centrally scanned at the board of elections and recorded as part of the precinct total, with any questions of voter intent resolved by the board of elections in accordance with the tabulation procedures outlined in the unofficial canvass directive (Directive 2008-105) and the procedures for remaking optical scan ballots in Directive 2008-69.

If you have any questions concerning this directive, please contact an elections administrator at 614-466-2585 or via e-mail.

Sincerely,

Jennifer Brunner