

# Chapter 9

## Post-Election Activities

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Ohio Election Official Manual

### SECTION 1.01 DEFINITIONS

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**Post-Election Audit:** A post-election audit is a comprehensive review of one or more contests in an election to ensure that the results reported by the board of elections are accurate. Audits are conducted following each general election in an even-numbered year and after each presidential primary election in accordance with procedures prescribed by the Secretary of State and set forth in this chapter.

**Contest of Election:** A contest of election is a court action to challenge the nomination or election of any person to any public office or the results of any ballot question or issue submitted to the voters.

**Recounts:** The process of recounting all ballots counted in the official canvass and re-examining the reconciliation of the records for a specific contest in an election.

### SECTION 1.02 RECOUNTS

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#### A. When a Recount Must Be Conducted

There are two types of recounts: automatic and requested.



## 1. Automatic Recount<sup>1</sup>

An automatic recount must be conducted when the difference between votes cast for a declared winning nominee, candidate, question, or issue, and the declared losing nominee, candidate, question, or issue is equal to or less than a certain percentage of the total votes cast in the candidate contest, question, or issue as described below.

### a. *Board of Elections Declared Automatic Recounts for Elections Conducted Exclusively Within the County*

A board of elections must order the automatic recount for any county, municipal, township, or school district race, or local question, or issue election wholly contained within the county when the difference between votes cast for a declared winning nominee, candidate, question or issue, and a declared losing nominee, candidate, question or issue is equal to or less than one-half of one percent (0.5%) of the total votes cast in the candidate contest, question, or issue. The calculation involves multiplying the vote totals by 0.005. See examples in Section B., Automatic Recounts.

A board of elections that orders an automatic recount must conduct the recount of the contest in question according to the procedures outlined in this chapter. The board of elections must notify the Secretary of State's Office of the race, question or issue subject to the recount, as well as the date, time, and location of the recount.

### b. *Secretary of State Declared Automatic Recounts of Multi-County District Elections*

The Secretary of State must order the automatic recount of any multi-county district race, question, or issue when the difference

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<sup>1</sup> [R.C. 3515.011](#).





between votes cast for a declared winning nominee, candidate, question or issue, and a declared losing nominee, candidate, question or issue is equal to or less than one-half of one percent (0.5%) of the total votes cast in the candidate contest, question, or issue. The calculation involves multiplying the vote totals by 0.005. See examples in Section B., Automatic Recounts.

The most-populous county of the subdivision or district must notify the Secretary of State's Office of the official results (i.e., the vote totals from each county as well as the grand total for the race, question or issue) and request the Secretary of State to order the automatic recount. After receiving the notification from the most-populous county, the Secretary of State will order the automatic recount via letter.

Each board of elections of the multi-county district must do the following:

- Schedule the recount to occur within time period stated in the order from the Secretary of State's Office;
- Issue notice of the recount to all individuals required to receive notice of the recount;
- Inform the Secretary of State's Office of the date, time, and location of the recount;
- Conduct the recount; and
- Report the results of the recount to the most-populous county.

The most-populous county then must report the results of the recount from each county in the multi-county district to the Secretary of State's Office.





c. *Secretary of State Declared Automatic Recounts in Statewide Elections*

The Secretary of State must order the automatic recount of any statewide election when the difference between votes cast for the declared winning nominee, candidate, question, or issue and the declared defeated nominee, candidate, question, or issue is equal to or less than one-fourth of one percent (0.25%) of the total votes cast in the race or issue.

When the Secretary of State orders an automatic recount of a statewide contest, each board of elections must conduct a recount in its county for the contest in question according to the procedures provided in this chapter. Each board of elections shall report the results of its recount directly to the Secretary of State's Office.

**2. Requested Recount<sup>2</sup>**

A requested recount may be conducted only when an automatic recount of a race or issue is not mandated by [R.C. 3515.011](#). The recount of a candidate contest may be requested by any candidate who was not declared nominated or elected. The recount of a question or issue may be requested by any group of five or more qualified electors who declare that they voted for a question or issue that was defeated, or against a question or issue that passed.

a. *Requested Recounts of Elections Within a County*

Any defeated candidate, nominee, or issue group may file a written application with the board of elections for a recount of the votes cast in the race, question, or issue in any precinct in which the race, question, or issue appeared on the ballot. A board of elections that receives a valid recount application must promptly notify the Elections Division of the Secretary of State's Office.

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<sup>2</sup> [R.C. 3515.01](#).





b. *Requested Recounts of Multi-County District Elections*

Any defeated candidate, nominee or issue group may file with the board of elections of the most-populous county of the district a written application for a recount of the votes cast in the race, question or issue in any precinct in any of the counties in which the contest appeared on the ballot. A board of elections that receives a valid recount application must promptly notify the Elections Division of the Secretary of State's Office.

c. *Requested Recounts in Statewide Elections*

Any defeated candidate or nominee for statewide office, or any group formed to support or oppose a statewide question or issue, may file a written application with the Secretary of State's Office for a recount of the votes cast in the race or issue in any precinct in any county.

**B. Automatic Recounts<sup>3</sup>**

**1. When One Candidate is to be Elected or Nominated**

Where there are two or more candidates for a single office but only one candidate is to be elected, add the votes for all candidates in that race together to obtain the total vote. For example:

Candidate A 2,845 votes (declared elected or nominated)

Candidate B 2,815 votes (declared defeated)

Candidate C 2,795 votes (defeated)

The total vote for the office is 8,455. One-half of one percent of 8,455 is 42.275 ( $8,455 \times 0.005$ ); do not round.

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<sup>3</sup> [R.C. 3515.011.](#)





Candidate A defeated Candidate B by 30 votes, which is less than 42,275. Because the difference between the declared winning candidate and the declared defeated candidate is less than one-half of one percent, in this example the board orders an automatic recount and recounts the votes cast for each of the three candidates in the contest.

## 2. When Several Candidates are to be Elected or Nominated

In a case where several candidates are to be elected, the term “declared winning candidate” in the statute is interpreted to mean the candidate whose nomination or election is disputed, rather than all of the candidates for the particular office.

Using the example below, if five candidates seek nomination or election, with three to be nominated or elected, only the votes cast for Candidates 3, 4, and 5 are regarded as the “total votes” cast for the third seat in computing the margin for an automatic recount. For example:

Candidate 1 4,200 votes (elected or nominated)

Candidate 2 2,301 votes (elected or nominated)

Candidate 3 2,300 votes (declared elected or nominated)

Candidate 4 2,275 votes (declared defeated)

Candidate 5 2,250 votes (defeated)

Do not include the votes cast for Candidates 1 and 2 to compute the total vote for the third seat because their nomination or election is not in dispute.

The votes cast for Candidates 3, 4, and 5 total 6,825. One-half of one percent of 6,825 is 34.125 ( $6,825 \times 0.005$ ); do not round.

Candidate 3 defeated Candidate 4 by 25 votes, which is less than





34.125. Because the difference between the declared elected and the declared defeated candidates is less than one-half of one percent, the board orders an automatic recount. Only the votes cast for Candidates 3, 4, and 5 are recounted in the contest.

### 3. Tied Contest Triggers Automatic Recounts

Any content that was tied according to the results of the official canvass triggers an automatic recount. Any candidate contest that was tied according to the results of the official canvass should have been resolved by lot at the end of the board's official canvass. In the event that the board neglected to resolve a tie in a candidate race at the end of its official canvass as required by law, it must break the tie by lot before starting the recount.<sup>4</sup> The board may only resolve a tie by lot during a public meeting with a majority of the board members present.

## C. Requested Recounts<sup>5</sup>

### 1. Written Application for a Requested Recount<sup>6</sup>

A recount of the election results certified by a board of elections may only be requested within five days after the board of elections or the Secretary of State declares the official results of the election.

If a contest (candidate, question, or issue) was wholly contained within a county, the application is filed with that county's board of elections.

If a contest (candidate, question, or issue) appeared on ballots in a multi-county district, the application is filed with the board of elections for the most-populous county of the district.

If the contest (candidate, question, or issue) was statewide, the application is filed with the Secretary of State's Office.

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<sup>4</sup> [R.C. 3505.33](#).

<sup>5</sup> [R.C. 3515.01](#).

<sup>6</sup> [R.C. 3515.01](#); [R.C. 3515.02](#); [R.C. 3515.03](#).





a. *Candidate Nomination or Election*

A candidate who was not declared nominated or elected in a race may make written application to the appropriate election officials for a recount of votes cast in that contest in some or all of the precincts where that contest was submitted to the voters.

b. *Question or Issue Election*

A group of five voters who voted opposite to the certified result (i.e., if the question or issue passed, they had voted against it; if the question or issue failed, they had voted for it) may file a written application with the appropriate election officials for a recount of votes cast on that question or issue in all or some of the precincts where that question or issue was submitted to the voters. The group filing the application for recount must designate one of its members as chairperson to receive all notices concerning the recount.

**2. Deposit<sup>7</sup>**

a. *Amount*

Applicant(s) for a recount must file a deposit of \$60.00 per precinct to be recounted in cash, bank money order, bank cashier's check, or certified check.

b. *Special Depository Fund*

The board shall deposit all funds received from an applicant in a special depository fund with the county treasurer. It is advisable for this to be an active line item in every fiscal year budget to ensure the prompt deposit of funds. The expenses of the recount and refunds shall be paid from that fund upon order of the board of elections. Any balance remaining in that fund that has not been

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<sup>7</sup> [R.C. 3515.03](#); [R.C. 3515.072](#).







spent for the recount or refunded to the recount applicant shall be paid into the general fund of the county.

c. *Purpose*

The deposit serves as security to cover the cost of the recount. If all requested precincts are not counted, any unused balance must be refunded to the applicant(s).

**3. Assessing Recount Charges<sup>8</sup>**

a. *Calculating the Charges*

The board of elections calculates the charges for the recount. It should include all expenses the board incurs because of the application, other than the regular operating expenses the board would have incurred regardless of whether the application had been filed.

The total amount of charges so calculated and fixed, divided by the number of precincts listed in the application and for which votes were actually recounted, shall be the charge per precinct for the recount. The charges per precinct shall not be more than \$60.00, or less than \$5.00, for each precinct in which the votes were recounted.

The board shall deduct the charge per precinct from the money deposited by the applicant, and shall refund to the applicant the balance of the money so deposited.

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<sup>8</sup> [R.C. 3515.07](#); [R.C. 3515.072](#).





b. *When Charges Are Not To Be Assessed*

No charge per precinct shall be deducted from the recount deposit upon the completion of the recount of a candidate nomination or election or issue election in any precinct, if either of the following occurs:

- i. The total number of votes cast in such precinct for the applicant, as recorded by the recount, is more than 4 percent larger than the number of votes for the applicant in that precinct recorded in the original certified abstract; or
- ii. The candidate applicant is declared nominated or elected, or the result of the issue election is declared to be opposite to the original declaration of result.

## D. Preparing For the Recount

### 1. Scheduling a Recount and Providing Written Notice<sup>9</sup>

a. *Scheduling*

After the appropriate board of elections or the Secretary of State has ordered an automatic recount, or an application requesting a recount has been filed, each board of elections participating in the recount shall promptly fix the time, method, and place at which the recount will occur.

The recount shall take place not later than 10 days after the day such application is filed or such order is made. After each Board schedules its recount, it must notify the board of elections for the most populous county, in the case of a multi-county district race or issue recount, or the Secretary of State's Office, in the case of a statewide race or issue recount, of the date scheduled for its recount.

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<sup>9</sup> [R.C. 3515.03](#).





b. *Notice*

At least five days before the date of its scheduled recount, the board of elections must give written notice by certified mail of the time and place of the recount to the following persons:

- Each person for whom votes were cast in the contest that is the subject of the recount.
- For question or issue elections, the chairperson of the group of electors that applied for the recount and/or the taxing authority or petitioners that submitted the question or issue to the board of elections.

c. *Waiver of Notice*

The requirement to mail notice may be waived if the board receives a written waiver from each person entitled to receive such notice. Please keep in mind that, even if all persons entitled to receive written notice of a recount waive their right to that notice, the board still must schedule its recount no earlier than the fifth day after the board completes its official certification.

**2. Observers<sup>10</sup>**

During a recount, ballots may be handled only by boards of elections members, directors, deputy directors, or other designated employees of the boards. Ohio law provides that duly-appointed observers may be present for any recount.<sup>11</sup> Please refer to Chapter 7, Section 1.08 Observers, for details on recount observers.

Representatives of the media are permitted to attend a recount.

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<sup>10</sup> [R.C. 3515.03](#).

<sup>11</sup> [R.C. 3515.03](#).





## E. Stopping an Automatic Recount

### 1. Before an Automatic Recount Starts<sup>12</sup>

At any time after an automatic recount is ordered, but before the recount commences, the declared defeated candidate or the issue chairperson for a losing side may file a written request to stop the recount. If more than one declared defeated candidate is entitled to the recount (see Section II for the definition of candidates who are “declared defeated”), each of the declared defeated candidates must file a written request to stop the recount. If each losing candidate entitled to the recount requests the recount be stopped, the board must grant the request.

### 2. After an Automatic Recount Starts<sup>13</sup>

At any time during a recount, the declared losing candidate or candidates or the issue chairperson for the losing side may file a written request to stop the recount.

If the board finds that results of the recount at that point will not change the official results (i.e., the margin of victory for the declared elected candidate is unchanged or has increased), the recount must be stopped. If the board finds otherwise, the board must deny the request to stop the recount, and the recount must continue until all ballots from the precincts involved have been recounted.

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<sup>12</sup> [R.C. 3515.03.](#)

<sup>13</sup> [R.C. 3515.04.](#)





## F. Procedures for Recount<sup>14</sup>

### 1. All Voting Systems

- a. The recount must be conducted by teams of elections officials equally divided among the state's two major political parties.
- b. A recount team of at least two election officials must compare the total number of votes cast in the candidate contests and question or issue elections being recounted to the number of voters listed in the poll book, poll list, or signature poll book records. If more votes in a precinct appear for a particular contest than the number of marked names in the poll book, poll list, or signature poll book records (showing voters who voted, including absentee and provisional voters), such occurrence must be documented.
- c. Any chain of custody logs for the ballots, poll worker reconciliation results, and board of elections reconciliation results should also be reviewed for each precinct being recounted.
- d. Sealed ballot envelopes must remain sealed; the actual ballot contained within the envelope shall not be viewed.
- e. Ballots must be checked to verify that each candidate's contest, question or issue was properly displayed on the ballots.
- f. The board will randomly select precincts whose vote totals for the race, question, or issue to be recounted equal at least 5 percent of the total vote in the race to be recounted.
- g. For the purposes of these procedures, "randomly select" means the following:
  - i. Whole precincts shall be selected for the recount.

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<sup>14</sup> [R.C. 3515.04](#); [R.C. 3506.18](#); [R.C. 3501.05](#).





**Note:** Each precinct's ballots shall include for the recount all relevant regular ballots (voter verified paper audit trail and/or optical scan paper ballots), provisional ballots, and absentee ballots of all types that were tallied and recorded as part of the official certification.

- ii. Enough precincts shall be selected for the recount whose total votes cast, when taken together, equal at least 5 percent of the total votes cast in the election at issue. To calculate this percentage, multiply the number of total votes cast in the election at issue is multiplied by 0.05 and then rounded up to the next whole number, if necessary.

The board shall employ a method that ensures that every precinct in the jurisdiction to be recounted has the same chance of being selected as any other precinct. Acceptable methods include casting multi-colored die with each different color representing a different numeral of the precinct number or drawing slips of paper from a container. If the latter is employed, the board must allow the slips of paper and the container to be inspected by appointed observers prior to commingling them inside the container for purposes of the drawing.

Because an applicant requesting a recount must name each precinct to be recounted, the definition of "randomly select" only applies to requested recounts in situations where the total number of voters who voted on the race or issue to be recounted in the precincts named in the application exceeds 5 percent of the total vote cast in the election to be recounted.

Random selection of precincts to be counted may occur before the scheduled recount takes place. However, the selection must occur during a public meeting of the board of elections, and the candidates or the question/issue group





chairperson must be notified of the time and place at least 24 hours before the meeting so that they may observe the drawing of precincts.

**Note:** It is important that every board of elections preparing for a recount take care that its preparations do not inadvertently become pre-counting, either in fact or in perception.

## 2. Manual Hand Count Procedures

- a. Prior to a manual hand count being conducted:
  - i. Ballots must be inspected for mutilations and other irregularities not accounted for by ballot remakes.
  - ii. Ballots must be checked for proper candidate position and to verify that each candidate or issue has been properly identified.
- b. The manual hand count shall be conducted in public session under the supervision of a majority of members of the board of elections. The board employees shall perform the manual hand count in the presence of the board members and observers who may be in attendance in accordance with [R.C. 3515.03](#).

### Counties Using Optical Scan Ballots as Primary Method of Voting

- a. Construct a team(s) of at least two individuals, with the team being evenly divided between individuals from each major political party. The two individuals must document and keep track of the votes by marking on the in-house Hand Count Tally Reporting Form.
- b. Prepare copies of an in-house Hand Count Tally Reporting Form for tabulating the official manual hand count of the actual ballots.
  - i. List the candidates, questions, and issues, or the specific race or issue to be manually hand counted, as well as the type of





- ballot, i.e. regular or provisional ballot voted at the precinct or absentee ballot. Overvoted and blank voted offices or issues shall also be recorded and noted as such (e.g., “OV” for overvote and “BL” for blank when no votes are cast for a contest).
- ii. Once the manual hand count is completed the Democratic and Republican members of the board who are responsible for conducting the manual hand count shall affix their signatures and the date of the manual hand count on the in-house Hand Count Tally Reporting Form.
  - c. Verify that the number of each type of optical scan ballots which includes regular, provisional and absentee optical scan ballots matches the board's records of each of those types of ballots cast in the race or issue involved.
  - d. Sort the ballots by type using the stack method, and then count the votes cast for each candidate, question and/or issue in each stack. Further utilize the stack method as follows:
    - i. Create stacks by type, sorting by candidate, yes or no or for or against vote, and by overvote or blank vote. Do this for each contest to be manually hand counted.
    - ii. A separate stack may also be compiled of those ballots with disputed or votes in question relating to voter intent, and these ballots may be marked with a paper clip or post-it note at the point on the ballot where the question arises. Please remember to include these ballots in subsequent stacks for a hand count for another race or issue.







### **Counties Using Direct Recording Electronic (DRE) Voting Machines as Primary Method of Voting**

- a. Construct a team(s) of at least four individuals, with the team being evenly divided between individuals from each major political party. One from each party will unroll the voter verified paper audit trail (VVPAT) and read the results. The other two people will document and keep track of the votes by marking on the in-house Hand Count Tally Reporting Form.
- b. Prepare copies of in-house Hand Count Tally Reporting Forms, one per voting machine per precinct for tabulating the manual hand count of the actual ballots, and a separate in-house Hand Count Tally Reporting Form for any optical scan ballots to be manually hand counted for the precinct.
  - i. List the candidates, questions, and/or issues, or the specific race or issue to be manually hand counted, as well as the type of ballot, i.e., regular (as noted above by type and voting machine) or provisional ballot voted at the precinct or absentee ballot. Overvoted and blank voted offices shall also be recorded and noted as such (e.g., “OV” for overvote and “BL” for blank when no votes are cast for a contest).
  - ii. Once the manual hand count is completed the Democratic and Republican members of the board who are responsible for conducting the manual hand count shall affix their signatures and the date of the manual hand count on the in-house Hand Count Tally Reporting Form.
- c. Verify that the number of each type of ballots to be manually hand counted, which includes regular ballots (VVPAT and DRE backup optical scan ballots) and provisional and absentee optical scan ballots, matches the board’s records of each of those types of ballots cast in the race or issue involved.





- d. Hand count the votes on the VVPAT for the selected voting precincts by voting unit, listing voting machine serial number on the tally sheet. Tally the votes on the in-house Hand Count Tally Reporting Form. Overvoted and blank voted offices shall also be recorded and noted as such (e.g., "OV" for overvote and "BL" for blank when no votes are cast for a race or issue).
- e. Any one or combination of the following events would indicate that the VVPAT cannot be used for a manual hand count of ballots for a DRE voting machine:
  - The printer on the DRE failed to print.
  - The paper jammed, causing the printer to print repeatedly over the same area of paper, preventing the reading of votes recorded on that part of the VVPAT roll.
  - Election officials installed the paper roll in such a way that it did not record the votes of a voter using that DRE.
  - The VVPAT is lost or damaged beyond recovery.
- f. Procedures for proceeding when VVPAT cannot be used:

[R.C. 3506.18](#) provides that the VVPAT shall serve as the official ballot to be recounted of ballots cast on a DRE. If, in the course of conducting a manual hand count, it appears that a VVPAT cannot be used as the official ballot because it either does not exist or has been damaged beyond repair, all the members of the board of elections shall meet in public session, examine the VVPAT in question and determine whether or not it can be used as the official ballot for votes cast on the DRE to which that VVPAT was affixed.

If a majority of the board members determine that the VVPAT cannot be used as the official ballot, the board members shall





immediately designate board personnel, equally divided between the two major political parties, to proceed as follows.

### **Process 1**

The designated board personnel shall produce a readable paper trail from the voting machine whose VVPAT is unusable. After a readable paper trail is printed, the board shall inspect the summary of results printed thereon for the election that is to be manually hand counted and compare them with the electronic results, if any, of the canvass (unofficial or official as the case may be). If the summary of results on the paper trail matches the results of the canvass, if any, the board shall use the paper trail as the official ballot for the manual hand count.

### **Process 2**

If the designated board personnel are unable to produce a paper trail from the voting machine following Process 1, they shall immediately proceed to upload the votes recorded on the DRE's removable memory device for the election that is to be manually hand counted and print a report of those votes. After printing the report from the DRE's removable memory device, the board members shall inspect the results printed thereon for the election that is to be manually hand counted and compare them with the electronic results, if any, of the canvass (unofficial or official as the case may be). If the results on the paper report produced under this process match the results of the canvass, if any, the board shall use this paper report for the manual hand count.

### **Process 3**

If the designated board personnel are unsuccessful in retrieving the votes recorded on the DRE removable memory device following Process 2, they shall immediately proceed to upload the votes recorded on the DRE's hard drive or internal flash memory for the





election that is to be manually hand counted and print a report of those votes. After the report is printed from the DRE's hard drive or internal flash memory, the board members shall inspect the results printed thereon and compare them with the electronic results, if any, of the canvass (unofficial or official as the case may be). If the results on the paper report produced under this process match the results of the canvass, if any, the board shall use this paper report for the manual hand count.

If the board has questions about this process, or if, after following the three procedures set forth, the board is unable to produce a usable paper report for the manual hand count, please contact the Secretary of State Elections Division at (614) 466-2585.

- g. Hand count provisional ballots (if for an official canvass, recount, or audit), and DRE backup paper ballots.
- h. Sort the provisional ballots (if for an official canvass, recount or audit), and DRE backup paper ballots by type using the stack method, and then count each stack. Further utilize the stack method as follows:
  - i. Create stacks by type, sorting by candidate, yes or no or for or against vote, and by overvote or blank vote. Do this for each contest.
  - ii. A separate stack may also be compiled of those ballots with disputed or votes in question relating to voter intent, and these ballots may be marked with a paper clip or post-it note at the point on the ballot where the question arises. Please remember to include these ballots in subsequent stacks for a hand count for another race or issue.





### 3. Optical Scan Voting Machines

#### a. Preparations – Optical Scan Ballots

Recount preparation includes the following steps for reconciliation of paper ballots for precincts randomly selected for the recount and/or for all ballots cast, where applicable:

- i. Select the precincts to be used in the recount; see procedures above for making random selection. In the event that there are both VVPAT and optical scan paper ballots for the same named precincts for the recount, only one selection process is necessary.
- ii. Make available for inspection, upon request of appointed observers, any and all documentation regarding the election.

#### b. Test the Program

Test the voting system in the same manner in which the board performed its pre-election and pre-canvass public tests.<sup>15</sup> Reset vote totals to zero after completing the test to ensure the recount totals are correct.

#### c. Verify Ballots

- i. Select the paper ballots to be compared with the electronic results for the precincts randomly selected for the recount.
- ii. Inspect the selected ballots to verify that each race, question or issue that is subject of the recount was properly displayed on the ballots.
- iii. Inspect the selected ballots for mutilations and other irregularities not accounted for by ballot remakes.

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<sup>15</sup> [R.C. 3506.14](#).





d. *The Recount*

- i. For each candidate contest or question or issue election to be recounted, a hand count of the votes cast on the optical scan paper ballots for each randomly selected precinct must be made by physical examination and hand count of the ballots using the procedures for conducting a manual hand count herein. All types of ballots must be included in the hand count (regular, absentee of all types, and provisional, including remakes for any of these types of ballots).

**Note:** Except as may be otherwise unavoidable (such as a recount of single-precinct local liquor option), the bipartisan teams conducting the hand count should not have access to the previously certified official results of the candidate contest, question or issue election results for that precinct.

**Note:** State law defines a valid mark for optical scan ballots.<sup>16</sup> In the event of a tie vote of the board regarding the validity of such a mark, the matter is not submitted to the Secretary of State.<sup>17</sup>

- ii. Optical scan counties using DRE voting machines in an election must also include a hand count of the VVPAT for DREs used in the election in question, described later, in the hand count of the precinct(s) randomly chosen for the initial 5 percent.
- iii. At the conclusion of the hand count, the board shall run the ballots through the tabulator and compare the electronic results with the hand count tally. If the electronic results and the hand count tally are identical, each ballot from each precinct on which the candidate contest, question or issue

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<sup>16</sup> [R.C. 3506.21](#).

<sup>17</sup> [R.C. 3505.27](#).





to be recounted appears shall be run through the tabulator again using the electronic voting system. It is not sufficient to re-upload media from the official canvass. A recount must start anew, as if no ballots have been scanned or tabulated.

- iv. If the electronic results and the hand count tally are not identical, the board must ascertain whether the error is a result of the hand tally or the electronic tally. If, after three rounds of hand-tallying the ballots for each randomly selected precincts still do not match, all ballots on which the candidate contest, question or issue to be recounted appears shall be hand-tallied. If the contest is a local liquor option election or another single precinct election, the hand tally shall suffice and an electronic re-tabulation is not necessary.
- v. In any case where the final electronic tabulation or hand tally of all ballots differs from the official certified results of that group of precincts, the official certified results shall be amended consistent with the applicable re-counted results, as discussed later in this chapter.
- vi. If the optical scan ballots used in the election being recounted have been run through the tabulator during the recount, the program must be re-tested using the pre-marked test deck at the conclusion of the recount.

#### **4. Direct Recording Electronic (DRE) Voting Machines**

##### *a. Preparations – DRE Ballots*

Recount preparation includes the following steps for verifying the ballot production for direct recording electronic, AutoMark, and optical scan (whether precinct-based or central count) vote tabulation machines for precincts randomly selected for the recount:





- i. Select the precincts to be used in the recount; see procedures above for making random selection. In the event that there are both VVPAT and optical scan paper ballots for the same named precincts for the recount, only one selection process is necessary.
  - ii. Make available for inspection, upon request of observers, any and all documentation regarding the election.
- b. *Test the Program*

Test the voting system in the same manner in which the board performed its pre-election and pre-canvass public tests.<sup>18</sup> Reset vote totals to zero after completing the test to ensure the recount totals are correct.

c. *Verify Voter Verified Paper Audit Trail*

- i. After the board has randomly selected one or more precincts, the sum of whose total votes cast equals at least 5 percent of the total votes cast for the candidate contest or the question or issue election being recounted, the board shall select the VVPAT to be compared with the electronic results for the precincts randomly selected for the recount.

**Note:** VVPAT serves as the official ballot to be recounted for the ballots cast on a DRE voting machine.<sup>19</sup> Sealed VVPAT canisters may be opened for the purposes of conducting the recount.

- ii. Check the VVPATs to verify that each candidate's contest, question or issue has been properly identified.

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<sup>18</sup> [R.C. 3505.27](#).

<sup>19</sup> [R.C. 3506.18](#).







- iii. Check the public counters to verify that the numbers on those counters correspond to the numbers on the VVPAT and the poll book, poll list, or signature poll book records.
- iv. Inspect the VVPAT for mutilations and other irregularities.
- d. *Verify Optical Scan Ballots Cast by Absentee and Provisional Voters*

DRE counties must complete the steps in the optical scan section, above, for the optical scan ballots cast in the precincts randomly selected for the recount and must include the results of the hand count of those optical scan ballots in the recount as discussed next.

e. *The Recount*

- i. Perform a hand count of the VVPAT in the randomly selected precincts using the procedures provided herein.

**Note:** Except as may be otherwise unavoidable (such as a recount of single-precinct local liquor option), the bipartisan teams conducting the hand count should not have access to the previously certified official results of the candidate contest, question or issue election results for that precinct.

- ii. At the conclusion of the hand count of the VVPAT, the board must upload to the central tabulation system the removable media (smart cards, compact flash memory cards, etc.) from each DRE for which a VVPAT was inspected. The board must generate a report for only those precincts that were randomly selected for the recount. If the electronic results and the tally from the hand count are identical, the board must upload to the central tabulation system all removable media (smart cards, compact flash memory cards, etc.) from each DRE at any voting location in the county at which a voter was eligible to vote on the candidate, question or issue election to be recounted and generate a report.





- iii. If the electronic results for one machine and the hand count tally of the VVPAT from that same machine are not identical, the Board must ascertain whether the error is a result of the hand or the electronic tally. If, after three rounds of hand tallying, the VVPAT for that DRE still does not match, the final hand tally of the VVPAT for that DRE shall be the recounted tally for that candidate contest, question, or issue.
- iv. In any case where the final electronic tabulation or hand tally of all VVPATs/DREs differs from the official certified results of that group of precincts, the Board shall amend the official certified results consistent with the applicable re-counted results, as discussed later in this chapter.

## **G. Post-Recount Considerations**

### **1. Regarding Ties**

In the event that the result of the official canvass in any candidate contest was a tie, and the result of the recount in that same candidate race remains a tie, the candidate declared the winner as decided by lot at the end of the official canvass remains the declared winner after the recount. The board must not break the tie by lot again. The original result stands.

In the event that the result of the official canvass of any candidate contest or issue was not a tie, but the recount results in a tie, the board will break the tie in the recount by lot. When submitting the amended abstract for the recount, boards should indicate the method used to break the tie.





## 2. Amended Abstract<sup>20</sup>

Upon completion of the recount, or upon stopping the recount pursuant to a written request from the candidate(s) involved, the board of elections shall promptly prepare and certify an amended abstract showing the votes cast in each precinct in which the race or issue appeared on the ballot. The amended abstract shall reflect the recounted votes of the precincts involved in the recount. The board shall mail copies of the certified amended abstract to such other boards of election or the Secretary of State's Office as it was required to do in the case of the original abstract and shall retain the original certified amended abstract. An amended abstract must be submitted to the Secretary of State's Office even if the vote totals do not change as a result of the recount.

The board shall make an amended declaration of the result of such election in the same manner the board made its original declaration of the result of such election.

## 3. Remedies by Candidates or Issue Groups Affected by Requested Partial Recounts<sup>21</sup>

If, following a requested recount, the amended declaration of the results of the election shows the result to be contrary to the originally declared result, a person who was originally declared nominated or elected, or any group of five voters that filed a statement with the board, may file an application with the board of elections or the Secretary of State's Office, whichever is appropriate, within five days after the date of the amended declaration of the result. The application must be accompanied by the appropriate deposit per precinct for a recount of the votes cast at such election in any precinct for which ballots have not already been recounted. Any such recount shall be conducted in the

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<sup>20</sup> [R.C. 3515.05.](#)

<sup>21</sup> [R.C. 3515.06.](#)





manner provided herein.

## H. Conclusion

The procedures described herein are the minimum requirements for conducting a recount. If a majority of the members of a board of elections believes the results warrant further investigation at any time during the conduct of the recount, the board may institute more rigorous procedures. If the board adopts procedures that are more rigorous than those prescribed herein, it shall: 1) adopt those procedures in public session, 2) document the procedures, and 3) retain that documentation with the ballots and other information relating to the recount. Any additional procedures adopted by the board must build upon the minimum requirements in state law or established by the Secretary of State's Office and may not weaken any of these requirements.

## SECTION 1.03 POST-ELECTION AUDIT PROCEDURES

A post-election audit is a comprehensive review of the results of one or more contests in an election to ensure that the results reported by the board of elections are accurate. Audits are conducted following each general election in an even-numbered year and after each presidential primary election in accordance with procedures prescribed by the Secretary of State and set forth in this chapter.

### A. Timeline

Each board of elections must conduct a post-election audit beginning no sooner than six business days after the board certifies the official election results, unless there is an automatic recount (declared by the board or declared by the Secretary of State in the case of a statewide or multi-county district election) or the board has received a valid application for a recount. If a recount is conducted, the post-election audit shall begin immediately after the board certifies the results of the recount. A board of elections **must not** conduct the audit before the board's certification of its official canvass





of the election. The board must complete the post-election audit no later than 21 days after certifying the official results of the election unless a recount must be conducted. If a recount is conducted, the post-election audit must be completed no later than 14 days after the board certifies the recount results.

## **B. Observers**

The post-election audit must be open to the public, the media and to duly appointed observers. Each board of elections must give public notice of the time and place of the post-election audit in the same manner that the board notifies the public of a board of elections meeting.

1. Throughout the audit, ballots may be handled only by boards of elections members, directors, deputy directors, or other designated employees of the board. No other person, including an observer, may handle a ballot under any circumstances.
2. Authorized appointing authorities may appoint observers to the post-election audit. Please refer to Chapter 7, Section 1.08 Observers, for details on audit observers.
3. The general public may observe the post-election audit and, to the extent practicable, must be given the same access as statutory observers, subject to the limitations below. Observers are permitted to observe the precinct selection process and to observe the count.
4. Depending on the number of individuals who may be appointed or desire to observe the post-election audit and the available resources of the board (i.e., physical space, number of counting stations, etc.), the board may limit the number of observers. However, statutory observers must be allowed to participate regardless of board resources. If the board must limit the number of observers, at least two members of the general public, randomly selected from those expressing an interest to observe must also be allowed to observe the audit. As a general rule, boards must do their best to accommodate the general public to the extent practicable.





5. Representatives of the media are permitted to attend any portion of the post-election audit.

### C. Preparations for the Post-Election Audit

1. Boards of elections will audit at least three contests as follows:
  - a. The “top of the ticket” contest (i.e., President or Governor);
  - b. At least one other statewide contest to be selected at random by the Secretary of State’s Office after Election Day;
  - c. At least one non-statewide candidate contest to be selected by the board of elections, except that the board shall exclude any contest in which the number of candidates for that contest (including eligible write-in candidates) does not exceed the number of candidates to be elected or nominated in that contest when making its selection. This must be a countywide candidate contest. A countywide question or issue may be used if you have no non-statewide candidate contest.
2. No later than the time the board meets to certify the official results of the election, the board must determine whether it will conduct its post-election audit by precinct, by polling location, or by individual voting machine<sup>22</sup> (herein collectively referred to as “units to be audited”), the date and location that the selection of units to be audited will take place, and the date and place that the audit will commence. It is preferable to audit the smallest unit available to the board. A board should conduct a post-election audit by polling location only if:
  - In a DRE county, if the voting machines in a multiple-precinct polling location were not precinct-specific on Election Day (i.e., the machines were programmed to display a ballot from any precinct or split in the multiple-precinct polling location so that a voter could cast his or her ballot on any voting machine without regard to the

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<sup>22</sup> Here, “voting machine” means automatic tabulating equipment, central counting station, voting machines, and direct recording electronic voting machines as defined in [R.C. 3506.01](#).





- precinct in which the voter was registered to vote), or
- In a paper ballot county, the scanners were not precinct-specific on Election Day (i.e., the scanners were programmed to read a ballot from any precinct or split in the multiple-precinct polling location and the voter could scan his or her ballot in any scanner without regard to the precinct in which the voter was registered to vote).
3. On the date the board selects the units to be audited, the board must randomly select a sufficient number of units to be audited until the number of votes cast (i.e., machine public count) on all selected units to be audited equals at least 5 percent of the total number of votes cast for the county (i.e., countywide voter turnout).
    - a. If the board is auditing by precinct, and the randomly selected precinct's public count is greater than or equal to 5 percent, the board must randomly select one additional precinct to be audited.
    - b. If the board is auditing by polling location, and the public count from the selected polling location is greater than or equal to 5 percent, the board must randomly select one additional polling location to be audited.

**Note:** While it is reasonable for the board to organize its materials and ballots between the date the selection is made and the date the audit begins (i.e., because it may take time to sort through commingled absentee ballots to segregate those from the selected precincts, etc.), the board should both allow observers to be present during these preparations and take great care to prevent a pre-audit from inadvertently taking place, either in fact or in perception, before the actual audit.
  4. In General:
    - a. When determining the public count, the board must include all relevant categories of ballots, including regular ballots (VVPAT and/





- or optical scan paper ballots), counted provisional ballots, and counted absentee ballots of all types for the precinct or polling location. The board is permitted to open sealed VVPAT canisters for the purpose of conducting the post-election audit, even if there is not a recount in the precinct.
- b. Selection of units to be audited must be random (meaning that each possible unit to be audited has the same chance of being selected). The board need not follow any particular method to ensure random selection of units to be audited. The casting of differently colored multi-sided die (with each die representing a different numeral in the precinct number) or drawing numbered slips of paper from a transparent container are both acceptable methods.
  - c. A board of elections may choose to audit a universe greater than 5 percent.
  - d. Elections records generally are public records and must be available for public inspection, including to observers during a post-election audit. Records that may be of interest to observers, and that should be available for inspection, include documents showing the number of ballots ordered and received by the board; the number of ballots that were voted, remade, spoiled, and uncounted; the number of absentee and provisional ballots issued, returned, validated, and invalidated; poll worker and board reconciliation sheets; and chain of custody logs. Boards of elections should consult the county prosecuting attorney for questions regarding public records.







## D. Conducting the Post-Election Audit

Boards are required to use either a simple, percentage-based post-election audit or a risk-limiting audit. Risk-limiting audits are recommended.<sup>23</sup>

1. The post-election audit must be conducted by teams of elections officials equally divided between the state's two major political parties (e.g., two, four, six, etc.).
2. A post-election audit team of at least two election officials must compare the total number of votes cast in the contests being audited to the number of voters listed in the poll book, poll list or signature poll book. If more votes appear for a particular contest in a precinct (including precincts contained in multi-precinct polling locations) than the number of marked names in the poll book, poll list or signature poll book (indicating which electors voted, including absentee and provisional voters), such discrepancy must be documented.
3. Ballots must be checked to verify that each contest has been properly identified on the ballot. Observers and members of the public may observe the inspection of the ballots but may **not** handle ballots.

**Note:** "Ballot" refers to both:

- A paper ballot that is optically scanned and counted at the precinct polling location or centrally tabulated; and
  - The VVPAT produced by any DRE.
4. For each contest to be audited, the board must physically examine and hand count the ballots for each randomly selected unit to be audited

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<sup>23</sup> The Cuyahoga County Board of Elections received a grant from the United States Elections Assistance Commission to develop and document processes and best practices for coordinating quality and cost-effective (1) voting system pre-election logic and accuracy testing (L&A) and (2) post-election audits. The procedures and best-practices developed by the Cuyahoga County Board of Elections for risk-limiting audits are available by contacting the board at [Cuyahoga@OhioSecretaryofState.gov](mailto:Cuyahoga@OhioSecretaryofState.gov)





and must hand count the votes cast on the ballots. The board then must compare the hand count to the recorded electronic summary of the votes contained in the official certification of the votes for that contest in that precinct or polling location. The board must make a record of the comparison for each precinct (including precincts contained in a polling location if conducting the audit by polling location) included in the post-election audit. The board shall document this process using the audit reporting work book.

**Note:** If any comparison of the hand count and official certification tally as noted above results in a difference between the hand count and the official certified tally, the board must determine if a mistake occurred in the hand count. If the board determines that no hand-counting mistake occurred, the hand count of the ballots shall be taken to be the accurate count. The board shall provide written notification to the Secretary of State of any such discrepancy.

5. At the conclusion of the post-election audit, the board must calculate the individual accuracy rate of each contest included in the audit by taking the sum of any discrepancies for each contest audited and dividing it by the sum of all ballots audited for that contest, then subtracting the resulting number from 100 to return the accuracy rate as a percentage.

**Note:** The board should use the absolute value of each discrepancy so that offsetting discrepancies (a one vote gain and a one vote loss) do not net out as zero discrepancies.

6. A county is required to escalate the audit if its accuracy rate is less than 99.5 percent in a contest with a certified margin that is at least 1 percent (calculated as a percentage of ballots cast on which the contest appeared), or less than 99.8 percent in a contest with a certified margin that is less than 1 percent. Escalation entails drawing a second random sample of at least 5 percent of votes cast, selected from units that were not audited in the original sample, and auditing the ballots (using the





same procedures) with respect to any such contest. If, after the second round of auditing, the accuracy rate from the two samples is below 99.5 percent, the county shall investigate the cause of the discrepancy and report its findings to the Secretary of State's Office within the same time for completing the post-election audit. In such cases, the Secretary of State's Office may require a 100 percent hand-count.

### **E. Reporting Results after the Post-Election Audit is Complete**

If the post-election audit results in change of vote totals reported in the official canvass, the board shall amend its certification of the official results of the affected contest in the same manner required for making of the original official declaration of the result of such election.<sup>24</sup>

After completing the post-election audit, the board must file its final results from the audit, using the audit reporting workbook, with the Secretary of State's Office.

The board must transmit its post-election audit results no later than five days after completion of the post-election audit to the Secretary of State's Office - Elections Division via e-mail (subject: Post-Election Audit) at [election@ohiosecretaryofstate.gov](mailto:election@ohiosecretaryofstate.gov).

## **SECTION 1.04 CONTESTS OF ELECTIONS<sup>25</sup>**

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The contest of election is a court action to challenge the nomination or election of any person to any public office or the results of any ballot question or issue submitted to the voters. A contest of election is generally filed when one or more election irregularities are alleged to have occurred, and one or more of the irregularities are alleged to have affected enough votes to change or make uncertain the result of the election being contested.

<sup>24</sup> [R.C. 3505.32\(A\)](#).

<sup>25</sup> [R.C. 3515.08 - R.C. 3515.16](#).





The procedure and requirements for a contest of election are provided in [R.C. 3515.08-3515.16](#). The board of elections has no jurisdiction or control over a contest of election. An individual interested in bringing a contest of election should seek the advice of private legal counsel. Neither a board of elections or the Secretary of State's Office can advise a person regarding a contest of election.

If a contest of election is filed within your county, you are encouraged to notify immediately the board's legal counsel, the county prosecuting attorney.

Note that the nomination or election of a person to a federal office is not subject to a contest of election under the provisions of the Ohio Revised Code.

Contests to the nomination or election of any person to a federal office must be conducted in accordance with the applicable provisions of federal law.<sup>26</sup>

### **A. Initiating a Contest of Election**

The results of an election may be contested by the filing of a petition with the clerk of the appropriate court within 15 days after the results of the election have been ascertained or announced or within 10 days after the results of a recount have been ascertained and announced. The petition must be signed by at least 25 voters who voted at the election for or against a candidate for the office being contested; for or against the issue being contested; or by the defeated candidate for nomination or election. The petition must be verified by an oath of at least two of the petition signers or the oath of the defeated candidate.

A bond with surety in a sum sufficient to cover the costs of the contest (determined by the clerk of court) must be filed with the petition.<sup>27</sup>

An individual interested in initiating a contest of election should consult with private legal counsel regarding the appropriate court with which to file the petition.

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<sup>26</sup> [R.C. 3515.08\(A\)](#).

<sup>27</sup> [R.C. 3515.09](#).





## B. Hearing and Judgment on a Contest of Election

The court shall fix a time for hearing the contest, which shall not be less than 15 nor more than 30 days after the filing of the petition.<sup>28</sup> The hearing shall be under the control and direction of the court which shall determine the matter without a jury.<sup>29</sup>

The court shall render a judgment in the contest of election.<sup>30</sup> The judgment may be appealed within 20 days to the Ohio Supreme Court.<sup>31</sup>

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<sup>28</sup> [R.C. 3515.10.](#)

<sup>29</sup> [R.C. 3515.11.](#)

<sup>30</sup> [R.C. 3515.14.](#)

<sup>31</sup> [R.C. 3515.15.](#)

