

165-007-0290

Hand Count of Ballots at General Election

- (1) This rule is adopted to implement hand counts of ballots counted by the vote tally system in the county at every general election as required by ORS 254.529. The hand count must be compared to the tally of votes produced by a vote tally system for the same ballots. The number of ballots that must be hand counted is dependent on the margin of victory between the two candidates in the same race receiving the largest number of votes in the county, as determined by the unofficial tally of ballots. Depending on the margin of victory, which will be determined by the results posted to the Secretary of State's electronic reporting system, ORESTAR, as of noon the day after the date of the general election, either 10%, 5% or 3% of all precincts or of ballots in ballot count batches will be hand counted.
- (2) For purposes of implementing ORS 254.529 and this rule:
 - (a) "Margin of victory" means the percentage difference between the first and second place candidates in a given contest. For a contest for state measure the "margin of victory" is the difference between the "yes" and "no" votes.
 - (b) "Precinct" means any precinct with registered voters.
 - (c) "Ballot count batch" means a subset of ballots which can be associated with a subtotal in the vote tally system.
 - (d) "State Office" means Governor, Secretary of State, State Treasurer, Attorney General, Commissioner of the Bureau of Labor and Industries, Superintendent of Public Instruction, judge of the Supreme Court, judge of the Court of Appeals or judge of the Oregon Tax Court.
- (3) In order to assist the Secretary in selecting the election contests for which ballots are to be hand counted, the Secretary shall appoint three members, one of whom will be an expert in statistics, to the Secretary of State's Hand Count Advisory Committee.
- (4) Not later than the day after the date of the general election the Committee shall randomly select the election contests for which the county elections official is to conduct the hand count. The Committee shall randomly draw for each county to select:
 - (a) The state office and state measure contests for which ballots are to be hand counted; and
 - (b) The precincts or ballot count batches in which ballots are to be hand counted. The same precincts or ballot count batches will be used to conduct the hand counts on all three election contests to be hand counted.
 - (c) If the randomly selected state office is the same contest in the county receiving the largest number of votes between two candidates, another state office will be randomly selected.
- (5) Once the Committee has randomly selected the election contests and the precincts or ballot count batches in which ballots are to be hand counted, the Secretary of State will notify county elections officials. In addition to identifying the precincts or ballot batches to be hand counted, the notification will include the state office, the state measure and the contest between the two candidates receiving the largest number of votes in the county.
- (6) Hand counts will be conducted in accordance with ORS 258.200 and ORS 258.211.
 - (a) Not later than the 5th business day after the date of the general election the Secretary of State will notify by first-class mail all affected candidates for selected election contests, chief petitioners or legislative sponsor of the state measure selected and any registered opponents of the measure.
 - (b) Members of the public may observe the hand count. The County Elections Official shall permit only so many persons as observers as will not interfere with an orderly procedure at the office of the County Elections Official.
- (7) A county elections official may only begin the hand count after certification of the official results to the Secretary of State, but not later than the 20th day after the election. All hand counts must be completed no later than the 30th day after the election.
- (8) If a comparison of the tally of votes produced by a vote tally system with the tally of votes produced by the hand count shows that the tally of votes produced by the vote tally system differs by no more than one-half of one percent of the total votes cast in the contest, from the tally of votes produced by the hand count, the hand count is complete and the county elections official reports the results as

provided in subsection (10). If the difference exceeds one-half of one percent of the total votes cast in the contest, a second hand count is conducted as provided in subsection (11).

(9) Valid votes that have been marked by the voter outside the vote targets or using a marking device that cannot be read by the vote tally system shall not be included in making the determination whether the voting system has met the standard of acceptable performance for any precinct or ballot batch under ORS 254.529(8)(a) through (c).

(10) Upon completion of the hand count, but not later than the 30th day after the election, the county elections official must submit to the Secretary of State form SEL 798 detailing any difference and providing an explanation of the difference between the hand count and the tally of votes produced by the vote tally system in the county. Over votes and under votes are excluded from the totals on the SEL 798. Valid votes referenced in (9) of this rule, are to be listed as exceptions on the SEL 798.

(11) If after the first hand count, a second hand count is required to be conducted, the county elections official must again upon completion, but not later than the 30th day after the election, submit to the Secretary of State form SEL 798 detailing any difference and providing an explanation of the difference between the hand count and the tally of votes produced by the vote tally system in the county.

(12) If the county elections official is required under ORS 254.529(8)(d) to conduct a hand count of all ballots counted by the vote tally system, the county elections official not later than the 30th day after the election must certify to the Secretary of State and any other appropriate elections official an amended abstract of votes.