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November 5, 2010

The Honorable Tim Scott
Multnomah Elections Director
1040 SE Morrison St
Portland OR 97214-2495

Dear Tim:

Pursuant to ORS 254.529(4)(a) this letter is to notify you of the election contests and the precincts in which ballots are to be hand counted. The Administrative Hand Count Advisory Committee reviewed the unofficial election results reported by your county in the Secretary of State's electronic reporting system, ORESTAR, at 3:00 p.m., Wednesday November 3, 2010.

Based on a review of the contest between the two candidates receiving the largest number of votes in the county you must conduct a hand count on 3% of the precincts in Multnomah County. In addition to determining the contest between the two candidates receiving the largest number of votes and the percentage of precincts to be hand counted the Advisory Committee randomly selected the state contest and the state measure contest to be hand counted.

For Multnomah County the following contests were selected:

- Governor
- Judge of the Court of Appeals Position 2
- 71

You will use the randomly selected precincts 2114, 3240, 4027, 4250 to conduct the hand count. The same precincts will be used to conduct the hand count on each of the three contests. You may begin the hand count at any time after you have certified your election results to the Secretary of State, but not later than November 23, 2010. All hand counts must be completed no later than December 2, 2010.

Enclosed you will find the Directive 2010-7 setting forth the procedures under which the hand counts must be conducted. If you have any questions about this process, please contact me at (503) 986-1518.

Sincerely,

Summer Davis
Compliance Specialist

Enclosure



OFFICE OF THE SECRETARY OF STATE

ELECTIONS DIVISION

DIRECTIVE OF THE SECRETARY OF STATE	SUBJECT: Hand Count	DIRECTIVE ISSUED AT THE REQUEST OF: Secretary of State	DATE: November 5, 2010	RULE NO.: 2010-7
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The Secretary of State as chief elections officer shall issue detailed directives necessary to maintain uniformity in the application, operation and interpretation of Oregon election laws. ORS 246.110 and 120
The information in this document is an official directive of the Secretary of State.

Question:

What procedures should be followed in conducting a hand count in a general election in accordance with O 254.529?

Answer:


Attached to and made a part of this directive are the instructions for preparing for and conducting a hand count of ballots cast at a general election.

The instructions provide information regarding:

- Appointment and Responsibilities of Secretary of State's Hand Count Advisory Committee
- Determination of the Number of Ballots to be Hand Counted by Each County
- Determining Which "State Office" Will be Hand Counted by Each County (ORS 254.529(3))
- Determining Which "State Measure" Will be Hand Counted by Each County (ORS 254.529(3))
- Determining Which Precincts/Ballot Count Batches Each County Will Hand Count
- Notification of Counties of Contests and Precincts/Ballot Count Batches to be Hand Counted
- Notice of Hand Count to Affected Parties
- Observers
- Preparing for the Hand Count
- County Elections Official's Notices and Breaking of Seals
- Appointing Counting Boards
- Ballot Counting Procedures
- Completing SEL 798 Worksheets for Each Hand Counted Contest
- If Results Returned Indicate "Not Acceptable"
- If Results Returned Indicate "Acceptable"
- Certification of Hand Count

The directive also includes a checklist that may be used by the counting boards.

Kate Brown
Secretary of State


Stephen N. Trout
Elections Division Director

Procedure for Hand Count of Ballots as Required by ORS 254.529 November 2, 2010 General Election

Appointment and Responsibilities of Secretary of State's Hand Count Advisory Committee (OAR 165-007-0290)

Not later than the day of the election, November 2, 2010, the Secretary of State shall appoint a three member advisory committee to assist in implementation of ORS 254.529. The Secretary shall designate one member to serve as Chair.

The Committee shall meet no later than the 3rd business day following the Election, November 5, 2010. Members of the public may observe the Committee perform the following tasks:

- Determine the percentage of ballots to be hand counted by each county;
- Select the State Office and State Measure Contests to be hand counted by each county;
- Select the precinct or ballot count batches to be hand counted in each count

Determination of the Number of Ballots to be Hand Counted by Each County

On November 4, 2010, the Advisory Committee will review the Unofficial Election Results reported by each county in the Secretary of State's electronic reporting system, ORESTAR, as of 3:00 pm, November 3, 2010.

Based on that review, the Advisory Committee will determine, for each county, the margin of victory (as defined in OAR 165-007-0290) in the contest in the county in which the top two candidates in the same race received the combined largest number of votes in the county.

From that contest the Advisory Committee will determine whether that county will hand count 3%, 5%, or 10% of the precincts/ballot count batches in the county for each of the contests to be counted.

The determination shall be based on the formulae established by ORS 254.529 (2)(a),(b) and (c):

- If the margin of victory is less than 1% of the total votes cast in that election; 10% of the precincts/ballot count batches shall be hand counted;
- If the margin of victory is greater than or equal to 1%, but less than 2% of the total votes cast in that election; 5% of the precincts/ballot count batches shall be hand counted;
- If the margin of victory is greater than or equal to 2% of the total votes cast in that election; 3% of the precincts/ballot count batches shall be hand counted.

Determining Which "State Office" Will be Hand Counted by Each County (ORS 254.529(3))

The Advisory Committee will randomly draw from a container of marked tickets that represent each of the State Offices, as defined by OAR 165-007-0290. A separate random selection will be made for each county.

Determining Which "State Measure" Will be Hand Counted by Each County (ORS 254.529(3))

The Advisory Committee will randomly draw from a container of marked tickets that represent each of the State Measures. A separate random selection will be made for each county.

Determining Which Precincts/Ballot Count Batches Each County Will Hand Count

The Hand Count Advisory Committee will randomly draw, from a container of marked tickets, a sufficient number of precincts/ballot count batches to equal the previously made determination of three, five or ten percent of the county's precincts/ballot count batches, for each county.

The Committee will assure that in every county, at least one of the randomly chosen precincts/ballot count batches have more than 150 ballots cast in the election. If it is determined that none of the randomly selected precincts/ballot count batches meet the 150 ballot criteria, the Advisory Committee will randomly draw alternate precincts/ballot count batches until one is drawn that meets the 150 ballot threshold.

The precincts/ballot count batches randomly selected by the Advisory Committee for each county shall be the only precincts/ballot count batches used for the Hand Count, and the ballots from those same precincts/ballot count batches will be used for the hand count in all contests to be counted.

Notification of Counties of Contests and Precincts/Ballot Count Batches to be Hand Counted

Once the Committee has randomly selected the election contests and the precincts/ballot count batches in which ballots are to be hand counted, but not later than the third business day following the election, the Secretary of State will notify county clerks. In addition to identifying the precincts/ballot count 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.

Notice of Hand Count to Affected Parties

The Hand Count is not an adversarial proceeding and is to be conducted as openly and expeditiously as possible. 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 sponsors of the state measure selected and any registered opponents of the measure.

Observers

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.

Official observers shall not in any way interfere with the preparation or counting procedure. Any comments or questions about the proceedings in progress shall be directed to elections supervisory personnel, not to the counting boards. If at any time any observer creates a

distraction or otherwise impedes the progress of the preparation or the count, the proceedings will be stopped and corrective action may be taken by the elections official.

Observers may observe the hand count for the purpose of assuring the integrity of the process, however they do not have any other role and do not have the right to address a counting board concerning the board's handling of individual ballots. Any observed procedural irregularity or perceived error may be reported to elections supervisory personnel who are to take corrective actions, if necessary. Observers may wish to keep written notes of comments on the handling of individual ballots.

Preparing for the Hand Count

The Hand Count shall be conducted pursuant to ORS 254.529 and OAR 165-007-0290 and the instructions and directives of the Secretary of State.

County Elections Official's Notices and Breaking of Seals

The county elections official shall determine the date, time and place of the Hand Count and notify the Secretary of State at least one business day prior to beginning the hand count. The hand count may not begin until the election results for the county have been certified to the Secretary of State, but must be started not later than the 21st day after the election, November 23, 2010. The Hand Count must be completed not later than the 30th day after the election, December 2, 2010.

The Hand Count is considered to have begun upon the breaking of the first seal of any precinct/ballot count batch selected to be hand counted. The initial seal breaking may be by the county staff in preparation of the hand count, or by the Counting Board Chair when the Board is ready to count ballots.

If preliminary preparation of the ballots is deemed necessary by the elections official and it requires seals to be broken the elections official, or designated staff member, must first notify the Secretary of State. The notice shall include the date, time and place at which such preparation will occur. This notice must be provided at least one business day before any seals are broken. The elections official shall then assemble all ballot containers holding ballots to be hand counted. Observers, if present, may examine the seals on the containers to make certain they have not been broken or tampered with. The seals may then be broken in the presence of observers. The containers shall be resealed upon completion of the preparatory procedures.

Appointing Counting Boards

The County Election Official shall appoint counting boards as needed. The counting boards shall consist of at least four members selected from the list of electors of the county. The number of counting boards necessary will depend on the number of precincts/ballot count batches to be counted, and the number of days available to complete the Hand Count by the deadline.

No member of the counting board shall have been a candidate for any office voted upon at the election. The members of a counting board shall not all be affiliated with the same political party. Compensation of counting boards shall be made at the rate which elections personnel

were paid at the election before the hand count, but at least the minimum wage required by state or federal law. (ORS 258.200).

The county elections official or each counting board shall select a chair prior to beginning the hand count.

Ballot Counting Procedures

Before starting the hand count, the elections official, or designated staff member, shall assemble all ballot containers and other materials pertinent to the hand count. The chair of each counting board shall examine the seals of the containers to make certain they have not been broken. The seals on all containers holding ballots to be hand counted shall be broken in the presence of the counting board and any observers present.

The ballots shall be taken from the container. Every cast ballot must be hand counted. Each counting board shall count only one precinct or ballot count batch at a time. The ballots to be counted shall be separated into the following stacks:

For a measure:

- 1) yes
- 2) no
- 3) overvotes,
- 4) undervotes,
- 5) potential exceptions (any ballot that is marked by the voter in a way that the vote tally system may not have appropriately tallied the vote. See examples later in this Directive.)

For a contest with candidates:

- 1) a separate stack for each candidate listed on the ballot in the contest
- 2) write-in votes
- 3) overvotes
- 4) undervotes
- 5) potential exceptions (any ballot that is marked by the voter in a way that the vote tally system may not have appropriately tallied the vote. See examples later in this Directive.)

The four member counting boards shall divide into two-person teams after all of the ballots have been separated into the appropriate stacks and inspected. Each two-person team shall count each stack of ballots. The teams shall compare their counts. If they agree, the number shall be posted to the return sheet provided. If the counts do not agree, each stack must be counted again until agreement is reached.

An overvote occurs when an elector marks more than the allowable choices for a particular office or measure. An undervote occurs when the elector does not mark any choice for a candidate or a measure. Each overvote and undervote ballot must be examined to confirm that the voter did, in fact, cast an overvote or an undervote. If the counting board determines that a ballot initially determined to be an undervote or an overvote is, in fact, a vote for a particular response position on the ballot for a candidate or a Yes or No, the ballot shall be set aside to be accounted for as an "exception".

The counting board may also find write-in votes for candidates on the ballot that may not have been properly assigned to the candidate by the vote tally system, or which may have been counted as undervotes or overvotes. These should also be considered exceptions.

The county elections official will compare the vote count reported by the counting board with the original vote tally system count. Any difference in the vote count prepared by the counting board and the original vote tally system count must be reviewed by the county elections official before the count of a precinct/ballot count batch is considered complete.

If the hand count results differ from the vote tally system results, the counting board will analyze the ballots to determine if the reason for the difference can be identified.

If any candidate or Yes or No position has gained votes, it is possible that a ballot that the vote tally system saw as an overvote or an undervote has been counted by the counting board as a valid vote. The stack of votes for that particular response position needs to be reviewed to determine if such a ballot can be identified. If the ballot is identified, it will be placed aside to be considered as an "exception".

The results of the hand count shall be entered into the form SEL 798 worksheet for the contest. Any difference in the hand count and the vote tally system count must be explained by the elections official.

Completing the SEL 798 Worksheets for Each Hand Counted Contest

The SEL 798 worksheets (provided by email in an Excel spreadsheet) are to be used to determine if a further hand count process is necessary. The form appears as follows with four tabs:

- 1) Example;
- 2) Top Two Candidates;
- 3) State Office;
- 4) State Measure.

General Election Hand Count

Example

County Name: Marion County
 Precinct/Ballot Count Batch Name(s): 342, 697, 782, 925
 Date Hand Count Begun: 11/25/2010
 Date Hand Count Completed: 12/1/2010
 Election Contest: State Treasurer

Candidate Name	Original Results	Hand Count Results	Exceptions	Difference	Notes and Remarks
Chris Griffin	1200	1200	0	0	
Lois Griffin	1100	1101	0	1	ballot
Peter Griffin	95	96	1	0	under vote
Stewie Griffin	20	20	0	0	
Meg Griffin	5	5	0	0	
Miscellaneous Write-Ins	5	5	0	0	
Under Votes	3	2	0	1	
Over Votes	0	0	0	0	
Total	2425	2427	1	1	
1/2 of 1%	12.125				
Final Results	Acceptable				

You must provide a detailed explanation for the difference between the original results and the hand count results in the space provided below:

One of the under votes included a ballot with a valid vote for Peter Griffin that was too faint to be read by the tally machine. We located an extra ballot that should have been included in the original tally.

General Election Hand Count

Top Two Candidates and State Office

County Name:
 Precinct/Ballot Count Batch
 Name(s):
 Date Hand Count Begun:
 Date Hand Count Completed:
 Election Contest:

Candidate Name	Original Results	Hand Count Results	Exceptions	Difference	Notes and Remarks
	0	0	0	0	
	0	0	0	0	
	0	0	0	0	
	0	0	0	0	
	0	0	0	0	
Miscellaneous Write-Ins	0	0	0	0	
Under Votes	0	0	0	0	
Over Votes	0	0	0	0	
Total	0	0	0	0	
1/2 of 1%	0				
Final Results	Not Acceptable				

You must provide a detailed explanation for the difference between the original results and the hand count results in the space provided below:

General Election Hand Count

State Measure

County Name:
 Precinct/Ballot Count
 Batch Name(s):
 Date Hand Count Begun:
 Date Hand Count Completed:
 Measure Number:

Measure	Original Results	Hand Count Results	Exceptions	Difference	Notes and Remarks
Yes	0	0	0	0	
No	0	0	0	0	
Under Votes	0	0	0	0	
Over Votes	0	0	0	0	
Total	0	0	0	0	
1/2 of 1%	0				
Final Results	Not Acceptable				

You must provide a detailed explanation for the difference between the original results and the hand count results in the space provided below:

Completing the SEL 798 Worksheets for Each Hand Counted Contest (cont.)

Some of the calculations are programmed into the spreadsheet.

The election official will need to enter the following:

- All heading info (County name, etc.)
- Column A: Contest Identifier and Candidate names
- Column B: Original Results (total of all precincts/ballot count batches being counted, from the certified results)
- Column C: Hand Count Results (including changes added or subtracted)
- Column D: Exceptions (those changes included in the hand count totals that were made as a result of the counting board identifying votes that the vote tally system could not read accurately because of the way the ballot was marked by the voter.
- Column E: Difference (the difference between the original count and the hand count EXCLUDING the Exceptions)
- Column F: Notes and Remarks (explanations of the Exceptions)

The Totals and the calculation of what constitutes $\frac{1}{2}$ of 1% of the total votes cast will be performed by the imbedded formulae in the spreadsheet.

The indicator of "Acceptable" or "Not Acceptable" will appear based upon the comparison of the difference with the $\frac{1}{2}$ of 1% of the total votes cast calculation.

If Results Returned Indicate "Not Acceptable"

If the formula indicates "Not Acceptable" that means that the difference has exceeded the $\frac{1}{2}$ of 1% statutory limitation, and that the same ballots must be hand counted a second time.

If the second count still reflects a "Not Acceptable" status, ORS 254.529 requires a countywide hand count of all ballots for all contests. The statute requires this to be completed not later than the 30th day after the election (December 2, 2010).

If a second count reflects "Not Acceptable", contact the Secretary of State's Elections Division immediately before proceeding.

If Results Returned Indicate "Acceptable"

Appropriate data from the worksheets is to be transferred to the SEL 798 and all worksheets will be attached to that form.

A separate SEL 798 must be filed with the Secretary of State for each of the contests hand counted. These must be filed no later than 5:00 p.m. on December 2, 2010.

Forms SEL 798 and the associated worksheets should be faxed to the Secretary of State Elections Division at 503-373-7414, or emailed as an attachment to: summer.s.davis@state.or.us.

All materials must be resealed. Resealing may be done precinct/ballot count batch by precinct/ballot count batch, in groups of precincts/ballot count batches contained in one sealable container, or as a county as a whole, in the county elections official's discretion. All ballots must be resealed at the close of business each day if ballots are not maintained in a secured room.

The hand count determinations are not considered final until they have been certified to the Secretary of State by the county elections official on the SEL 798.

Certification of Hand Count

As soon as practicable after completion of the hand count, but not later than 5:00 p.m. on the 30th day after the election, December 2, 2010, the elections official shall certify the results of the hand counted votes to the Secretary of State on form SEL 798. The completed SEL 798 and the required worksheets should be delivered to the Secretary of State as soon as possible, by any delivery method that provides a written record. (Fax to: 503-373-7414 or email to summer.s.davis@state.or.us).

EXAMPLES OF POSSIBLE "EXCEPTION" BALLOTS

The following are some examples of ballots that may fall into the "Exception" category, that is, ballots which have been marked by the voter in a manner that may not have allowed the vote tally system to tally it as the voter intended.

While the final determination is up to the counting board, these standards have been established in the Oregon Vote by Mail Manual.

Two (or more) ovals or arrows have been marked and one mark has been erased, but enough residue is left that the scanner may read an overvote.

 **Yes**
 **No** (*erasure has been done*)



Since there was an erasure attempt, this should be a Yes vote, although the vote tally system may have seen an overvote.

One response is indicated with a heavy line or dark oval and a second response is marked with a narrow line or pale oval, but no erasure has been attempted.

 **Yes**
 **No** (*no erasure has been done*)

Since no erasure has been attempted, this should be counted as an overvote and probably was seen as an overvote by the vote tally system.

The arrow or oval has been completed for one response and a dot or partially completed arrow or oval is marked for the other.

 **Yes**
 **No**

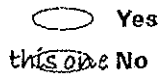
This should be a Yes vote, although the vote tally system probably counted it as an overvote.

The arrow or oval has not been marked, but the response is circled.

 **Yes**
 **No**

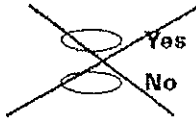
This should be a No vote although the vote tally system may have counted it as an undervote.

A word has been used to indicate the vote instead of completing the arrow or the oval.



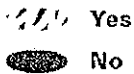
This should be a No vote. The vote tally system may or may not have counted this correctly.

The entire response area for a contest is crossed out.



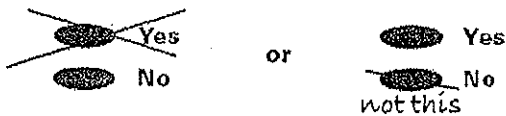
We can't be sure what the vote tally system might have done with this, although it should be an undervote.

Corrections are made with liquid white-out.



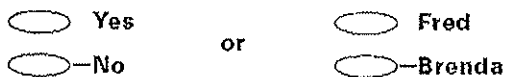
This should be a No vote, although the vote tally system probably saw it as an overvote.

More than one arrow or oval has been completed, but a word or mark is used to indicate the correct vote.



It is clear the voter is indicating a mistake was made. The vote tally system would have seen these as overvotes.

The arrow or oval has not been marked but there is a connective line between the response and the arrow or oval to indicate the vote.



These votes should be counted (No and Brenda) although the vote tally system would have seen them as undervotes.

Sample Hand Counting Board Checklist

- _____ 1. Check the seals on all pertinent containers to be sure they are intact. Provide each counting board with ballots for one precinct/ballot count batch.

- _____ 2. Separate the ballots into the following stacks:

For Ballot Measure hand count:
 - _____ One stack for "Yes" votes
 - _____ One stack for "No" votes
 - _____ Overvoted ballots
 - _____ Undervoted ballots
 - _____ Ballots that may be "Exceptions"
For Candidate hand count:
 - _____ One stack for each candidate's votes
 - _____ Overvoted ballots
 - _____ Undervoted ballots
 - _____ Ballots that may be "Exceptions"

- _____ 3. Divide each four member counting board into teams of two. Each two-member team count ballots in each stack for the precinct/ballot count batch and records the count.

- _____ 4. Compare the counts and continue to count each stack until each team agrees on the final count.

- _____ 5. Record the final count on a return sheet.

- _____ 6. Advise the Election Official upon completion. Election Official will compare results with original results and advise as to further action.

- _____ 7. If results are acceptable, repackage ballots in container and re-seal.