

**1.10.23.9 “TWO PERCENT” AUDIT PROCEDURES:** This section applies to audits of gubernatorial and presidential races in a general election, as required by Section 1-14-13.1 NMSA 1978.

**A. Simple random sampling of voting systems required for audit.** In selecting the voting systems to be used in an audit, the secretary of state shall obtain a random sample of two percent (2%) of voting systems from each county in accordance with the procedures in this subsection.

(1) By no later than 1:00 P.M. on the Monday immediately following election day, the secretary of state shall select the voting systems to be audited. The serial number of each voting system used prior to or on election day shall be placed on a separate piece of paper and the papers with the serial numbers shall be placed in a separate container for each county. The secretary of state shall pull voting system numbers at random from each container until two percent (2%) of voting systems from each county are drawn. If two percent (2%) of all voting systems in a county is less than one voting system, the secretary of state shall draw one voting system for that county.

(2) By no later than 1:00 P.M. on the Tuesday immediately following election day, the secretary of state shall notify the county clerks of the serial numbers of the voting systems that have been selected for auditing.

(3) The random sampling process shall be open to public observation. At least seven (7) days prior to the random sampling conducted pursuant to this subsection, the secretary of state shall post notice on its web site of the time, date, and location of the random sampling.

**B. Time and place; ballot security.**

(1) The county clerk shall choose a location for the audit that is accessible to the public.

(2) The county clerk shall arrange for transportation of ballots to the audit site and contact the sheriff or state police to move the ballot boxes from the current place of storage to the audit site.

(3) Prior to conducting the audit, the county clerk shall seek an order from the district judge permitting the county clerk to open those ballot boxes containing ballots from the voting systems selected for auditing.

(4) The county clerk shall assign counting teams of at least two members to particular voting systems. The team shall consist of one reader and one marker, not of the same political party whenever feasible.

(5) At least one person in addition to the county clerk shall witness all movement of ballots during the audit, and all movement of ballots from and to the ballot box during the audit process shall be logged. Each time that ballots are removed from or returned to a ballot box, the number of ballots shall be determined and compared to the number of ballots that should be in that particular ballot box. Any discrepancies shall be noted.

**C. Hand counting procedures for audits.** The ballots from the voting systems selected for auditing shall be hand tallied pursuant to the procedures in this subsection. The secretary of state shall provide tally sheets for only those races being tallied as part of the audit, and shall include options for marking undervotes and overvotes.

(1) The counting team shall ensure that the serial number for the voting system and the type of ballot to be counted are prominently displayed on the tally sheet.

(2) To count the votes, the reader shall read the vote to the marker and the marker shall observe whether the reader has correctly read the vote; the marker shall then mark the tally sheet of the appropriate precinct, and the reader shall observe whether the marker correctly marked the tally sheet. Upon completion of the recount of a voting system or portion of a voting system, the marker shall add the total number of votes for each candidate as well as any undervotes or overvotes. The reader shall confirm these amounts. Both the marker and the reader shall sign the tally form.

(3) If a ballot is marked indistinctly or not marked according to the instructions for that ballot type, the counting team shall as provided for in Subsection A and Paragraphs (1) through (4) of Subsection B of Section 1-9-4.2 NMSA 1978. In no case, shall the counting team mark or re-mark the ballot. 1.10.23.12 NMAC contains illustrative examples of how to discern voter intent.

**D. Audit reconciliation procedures.**

(1) Immediately upon the conclusion of the audit, the county clerk shall compare the results of the machine count with the results of the hand tally, provide the results to the secretary of state in writing, and make the results available to the public. The secretary of state shall combine the county files and place the results on the secretary of state's website.

(2) The secretary of state shall determine whether a recount is required pursuant to Subsection B of Section 1-14-13.1 NMSA 1978, and within five (5) days of the completion of the state canvass, file notice with the appropriate canvassing board(s) that a recount is required. In the notice, the secretary of state shall specify the office and precincts that shall be recounted. When a recount is required by Section 1-14-13.1 NMSA 1978, a recount shall be made in all precincts of the legislative district in which the discrepancy occurred.

**(3) All recounts required pursuant to Subsection B of Section 1-14-13.1 NMSA 1978 shall be conducted pursuant to 1.10.23.10 NMAC.**