

CHAPTER 05:02:23

POST-ELECTION AUDITS

Section

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5:02:23:02. Post-Election Audit Definitions. Terms used in this chapter mean:

(1) "Counted ballot," a voted ballot counted by the post-election auditing board in at least one contest;

(2) " Paper seal," a seal affixed to ballot receptacles or containers;

(3) "Board Member," A member of the post-election auditing board cannot be a person who worked as an election worker in the election being audited. Members must be of different political parties and registered voters in the county where the audit is taking place. No member may be a candidate for office that is on the ballot being audited;

(4) "Over vote," a race in which more votes were cast on a ballot than allowed for that race

(5) "Voted ballot," a ballot placed in the ballot box at any time;

(6) "Write-in vote," a name written on a ballot in an attempt to indicate a vote for that person.

Source:

General Authority: SDCL 12-1-9(4), (11).

Law Implemented: SDCL 12-17B-18.

5:02:23:03. Notice of appointment of Post-Election Auditing board. The notice of appointment of the Post-Election Auditing board must be in the following form:

STATE OF SOUTH DAKOTA)

_____) SS NOTICE OF APPOINTMENT
COUNTY OF _____)

TO _____

_____ Auditing Board Member, _____ party _____

_____ Auditing Board Member, _____ party _____

_____ Auditing Board Member, _____ party _____

_____ Auditing Board Member, _____ party _____

_____ Auditing Board Member, _____ party _____

_____ Auditing Board Member, _____ party (add/remove lines as necessary)

You are appointed as a member of the post-election audit for the 20____ (primary or general) election in _____, _____ County, on (June or November) _____, 20____. Please report to _____ at _____ am/p.m. the day of the post-election audit. If you are unable to serve, please notify the county auditor immediately.

The post-election audit training will be held at _____ on the _____ day of _____, 20____, at _____ m.

Witness my hand and the seal of this county, this _____ day of _____, 20____.

County Auditor

Source:

General Authority: SDCL 12-1-9(4), (11).

Law Implemented: SDCL 12-17B-18.

5:02:23:04. Signing of oaths. The post-election auditing board, before assuming its duties, shall execute the oath of office prescribed in 5:02:23:01.

Source:

General Authority: SDCL 12-1-9(4), (11).

Law Implemented: SDCL 12-17B-18.

5:02:23:05. Staff for post-election auditing board. The county auditor shall be responsible for providing administrative support and staff for the post-election auditing board.

Source:

General Authority: SDCL 12-1-9(4), (11).

Law Implemented: SDCL 12-17B-18, 12-17B-22.

5:02:23:06. Post-election auditing board receipt for official ballots. The post-election auditing board's receipt for the official ballots shall be in the following form:

STATE OF SOUTH DAKOTA

 COUNTY

PRECINCT

We, the Post-Election Auditing Board Members, do hereby certify that on the _____ day of _____, 20____, at the post-election audit for the (Primary or General) election held on _____, 20____, we received from _____, County Auditor, a sealed package containing the following official ballots:

(Here list the official ballots received)

for the purpose of conducting a post-election audit.

Dated this _____ day of _____, 20____.

Post-Election Auditing Board member

Post-Election Auditing Board member

Post-Election Auditing Board member

Post-Election Auditing Board member

Post-Election Auditing Board member (add
additional lines when necessary)

Source:

General Authority: SDCL 12-1-9(4), (11).

Law Implemented: SDCL 12-17B-18.

5:02:23:07. Public vote count. In the presence of all persons desiring to attend the post-election audit vote counting, the post-election auditing board shall immediately proceed to publicly hand-count the votes and shall continue without adjournment until the count is completed. The post-election auditing board may not exclude or prohibit any member of the public from witnessing any portion of the post-election audit vote counting, so long as that person's conduct is not disruptive.

Source:

General Authority: SDCL 12-1-9(4), (11).

Law Implemented: SDCL 12-17B-18, 12-17B-22.

5:02:23:08. Opening receptacle or container. The receptacle or container shall be opened and the ballots taken out, sorted by precinct (if necessary) so that all ballots on the post-election audit contests and questions are separately identified.

Source:

General Authority: SDCL 12-1-9(4), (11).

Law Implemented: SDCL 12-17B-18, 12-17B-25.

5:02:23:09. Auditing procedures. The following procedure shall be used in auditing a precinct by hand-counting the ballots:

(1) The post-election auditing board shall review ballots for proper marking procedure according to the voting instructions below. The post-election auditing board shall determine the votes to count based on:

(a) a mark that is inside the oval on an optical scan ballot shall be counted as a vote;

(b) any mark on an optical scan ballot that does not touch the oval and is not in the oval may not be counted as a vote;

(c) a mark on an optical scan ballot that touches two or more ovals is considered an over-vote and not counted;

(d) any write-in vote may not be counted;

(e) Express votes are to be counted as shown on the Express vote ballot; and

(2) Any question arising on the post-election audit shall be determined by majority vote of the post-election auditing board; and

(3) The post-election auditing board shall certify the results as hand counted for the Post-Election Audit by completing the Certificate of Post-Election Audit as provided in § 5:02:23:13. The Certificate of Post-Election Audit shall be filed with the county auditor.

Source:

General Authority: SDCL 12-1-9(4), (11).

Law Implemented: SDCL 12-17B-7, 12-17B-18, 12-17B20, 12-17B-22.

5:02:23:10. Tally of ballots. As the vote is announced by a post-election auditing board member, one post-election auditing board member shall make the required mark on the post-election audit tally sheet outlined in § 5:02:23:12. Another post-election auditing board member shall make the required mark on a duplicate post-election audit tally sheet.

Source:

General Authority: SDCL 12-1-9(4), (11).

Law Implemented: SDCL 12-17B-20.

5:02:23:11. Use of tally sheets. The post-election auditing board shall use the tally sheet prescribed by § 5:02:23:12 in the audit vote counting.

Source:

General Authority: SDCL 12-1-9(4), (11).

Law Implemented: SDCL 12-17B-20.

5:02:23:12. Post-Election Audit Tally sheets. As shown below, a post-election audit tally sheets must be ruled by horizontal and perpendicular lines to form squares of suitable size to contain five tally marks each, four of which may be upright and the fifth crossing the others at an oblique angle. Each fifth perpendicular line in the ruling must be red, so that five squares for tally marks are contained between each two red lines. In a perpendicular column at the left margin of each post-election audit tally sheet sufficient space must be left to legibly print or write in ink the names of the contests audited, in the same order as on the official ballots used in the election. At the extreme right margin of the post-election audit tally sheet there must be a perpendicular column with sufficient space to label the column at the top of the post-election audit tally sheet as follows: "Total Votes."

POST-ELECTION AUDITING TALLY SHEET

ELECTION: _____

AUDIT DATE: _____

COUNTY AND PRECINCT: _____ **# OF BALLOTS** _____
Received from Auditor

CONTEST NAME: _____

CANDIDATE NAME OR QUESTION						TOTAL VOTES:			

CANDIDATE NAME OR QUESTION						TOTAL VOTES:			

(add as many candidate names and tally boxes as necessary)

AUDITING BOARD MEMBER: _____
(PRINT) (SIGN)

AUDITING BOARD MEMBER: _____
(PRINT) (SIGN)

(add as many lines as necessary)

Source:

General Authority: SDCL 12-1-9(4), (11).

Law Implemented: SDCL 12-17B-20.

5:02:23:13. Certificate of Post-Election Audit. The Certificate of Post-Election Audit must be in

the following form:

STATE OF SOUTH DAKOTA)

_____) SS CERTIFICATE OF POST-ELECTION AUDIT

COUNTY OF _____)

WE, THE UNDERSIGNED members of the Post-Election Auditing board, do hereby certify the results

of the audit for the following specified candidates or questions

_____ for the election held on the _____ day of _____,

_____. We completed the audit on the _____ day of _____.

<u>Precinct</u> _____			
	<u>Total Votes</u>	<u>Total Yes</u>	<u>Total No</u>
<u>Candidate Name</u>	_____		
<u>Candidate Name</u>	_____		
<u>Ballot Question Name</u>		_____	_____

The following is a brief description of the proceedings of this post-election audit:

Signed by a majority of the recount board:

Post-Election Auditing Board Member

Post-Election Auditing Board Member

Post-Election Auditing Board Member (add more board member lines as necessary)

Attested under SEAL by the _____ County Auditor:

Source:

General Authority: SDCL 12-1-9(4), (11).

Law Implemented: SDCL 12-17B-18, 12-17B-20, 12-17B-22.

5:02:23:14. Procedure for placing post-election audit voted ballots in the ballot receptacle or container. After the audit has been completed, the post-election auditing board shall place the audited voted ballots in the ballot receptacle or container keeping them separated in wrappers or envelopes and sealed as provided in § 5:02:23:15.

Source:

General Authority: SDCL 12-1-9(4), (11).

Law Implemented: SDCL12-17B-25.

5:02:23:15. Form of the seal. Seal - A security mechanism using strategically placed serialized or tamper-evident materials that alert officials if a device used in the elections process has potentially been altered or accessed without authorization. The seal must be in the following form:

BALLOT RECEPTACLE OR CONTAINER SEAL

SIGNATURES OF POST-ELECTION AUDITING BOARD

(date)

(date)

(date)

(date)

Where ballots are counted by hand for a post-election audit, upon returning ballots to a receptacle or container after counting, the post-election auditing board shall sign these seals and affix the seals to the receptacle or container openings and upon all places where the receptacle or container may be opened except where the openings are sealed with a metal seal.

Source:

General Authority: SDCL 12-1-9(4), (11).

Law Implemented: SDCL 12-17B-25.

5:02:23:16. Reimbursement of Post-Election Audit costs. The county Auditor shall submit Post-Election Audit expenses to the Secretary of State for reimbursement. The Auditor shall use the forms designated by the Secretary of State.

Reimbursable expenses for the audit, include but are not limited to: board member pay for conducting the audit and for training prior to the audit (if applicable), supplies, rental costs for the location to conduct the audit in, publication costs, ballot storage costs, travel (mileage), etc.

Source:

General Authority: SDCL 12-1-9(4), (11).

Law Implemented: SDCL 12-17B-19.

5:02:03:14. Acknowledgement notice for invalid or incomplete voter registration applications. The acknowledgement notice, sent by nonforwardable mail to each person who submits a voter registration application to the county auditor that is invalid or incomplete and cannot be filed, must be in the following form:

Invalid or Incomplete Voter Registration Acknowledgement Notice

_____ Your voter registration is not valid because you are not eligible to be a registered voter.

Reason:

_____.

_____ Your voter registration has not been processed because your application is incomplete.

Please ~~call~~ our office if you have questions or visit our office to complete your registration. You will not be able to vote in accordance with the voter registration submitted unless you provide the needed information before

_____.

To complete your voter registration ~~call~~ call if you have questions, ~~or please call~~ or please visit our office at

_____.

Thank You,

County Auditor

Source: 21 SDR 77, effective October 24, 1994; 22 SDR 95, effective January 18, 1996; 28 SDR 99, effective January 17, 2002; 44 SDR 94, effective December 4, 2017; 50 SDR 12, effective August 8, 2023.

General Authority: SDCL 12-1-9(3), 12-4-5.3, 12-4-35.

Law Implemented: SDCL 12-4-5.3.

5:02:05:02.01. Instructions to the voters using optical scan ballots. The instructions to voters using optical scan ballots must be posted in at least two locations ~~in~~ within close proximity to the entrances to the polling place, depicted in at least 48 point forty-eight-point type for optical scan ballots, and must be in the following form:

INSTRUCTIONS TO THE VOTERS:

TO MARK THE BALLOT

~~Fill~~ Completely fill in the oval (●) next to the name or ballot question. Use only the pencil or marker given to you!

Do not make any marks other than completely filling in the oval.

Do not erase anything on your ballot.

Do not rip your ballot or make holes in it.

Do not write in a name.

IF YOU MAKE A MISTAKE

If you make a mistake give the ballot back and get a new one.

If you cast more votes than allowed in a race, give the ballot back and get a new one.

TO RETURN THE BALLOT AFTER VOTING

Put the ballot in the holder so the ballot stamp shows and take the ballot to the ballot box where the ballot stamp can be seen by the poll worker.

IF YOU NEED HELP, ASK.

PROVISIONAL BALLOT

You may vote a provisional ballot if your name is not on the voter list but you registered in this precinct by the deadline. You must complete both the envelope and ballot.

VOTING RIGHTS

Any voter who can't mark a ballot because the voter has a physical disability or can't read, may ask any person he or she chooses to help them vote.

Any voter may ask for instruction in the proper procedure for voting.

Any voter at the polling place prior to 7:00 p.m. is allowed to cast a ballot.

ELECTION CRIMES

Anyone who makes a false statement when they vote, tries to vote knowing they are not a qualified voter, or tries to vote more than once has committed an election crime.

OTHER INFORMATION INFORMATION

The polls are open from 7:00 a.m. to 7:00 p.m. If your voting rights have been violated, you may call the person in charge of the election at _____, the Secretary of State at 888-703-5328, or your state's attorney.

The instructions to be posted in each voting booth for optical scan ballots must be in the following form:

INSTRUCTIONS TO THE VOTERS:

TO MARK THE BALLOT

Completely fill in the oval (●) next to the name or ballot question. Use only the pencil or marker given to you!

Do not make any marks other than completely filling in the oval.



~~WRONG~~ ~~WRONG~~ ~~WRONG~~ ~~RIGHT~~

Do not erase anything on your ballot.

Do not rip your ballot or make holes in it.

Do not write in a name.

IF YOU MAKE A MISTAKE

If you make a mistake, give the ballot back and get a new one.

If you cast more votes than allowed in a race, give the ballot back and get a new one.

TO RETURN THE BALLOT AFTER VOTING

Put the ballot in the holder so the ballot stamp shows and take the ballot to the ballot box where the ballot stamp can be seen by the poll worker.

IF YOU NEED HELP, ASK.

The instructions to be published with the facsimile ballot for primary and general elections must be in the following form:

INSTRUCTIONS TO THE VOTERS

VOTING RIGHTS

Any voter who can't mark a ballot because the voter has a physical disability or can't read, may ask any person he or she chooses to help the voter vote.

Any voter may ask for instruction in the proper procedure for voting.

Any voter at the polling place prior to 7:00 p.m. is allowed to cast a ballot.

If your voting rights have been violated, you may call the person in charge of the election at _____, the Secretary of State at 888-703-5328, or your state's attorney.

Any person who is convicted of a felony on or after July 1, 2012, loses the right to vote. However, any such person may register to vote following the completion of the person's felony sentence.

Any person who is convicted of a felony on or before June 30, 2012, and who receives a sentence of imprisonment to the adult penitentiary system, including a suspended execution of sentence, loses the right to vote. Any such person so sentenced may register to vote following completion of the person's sentence. Further information is available at www.sdsos.gov.

ELECTION CRIMES

Anyone who makes a false statement when voting, tries to vote knowing he or she is not a qualified voter, or tries to vote more than once has committed an election crime.

Source: 27 SDR 146, effective July 9, 2001; 28 SDR 99, effective January 17, 2002; 29 SDR 177, effective July 2, 2003; 30 SDR 171, effective May 10, 2004; 32 SDR 109, effective December 26, 2005; 32 SDR 225, effective July 3, 2006; 36 SDR 209, effective June 30, 2010; 39 SDR 123, effective January 16, 2013; 42 SDR 15, effective August 11, 2015.

General Authority: SDCL 12-1-9(3), 12-1-9(9).

Law Implemented: SDCL 12-4-18, 12-16-23, 12-16-25, 23A-27-35, ~~USC 1973gg-6(g)~~.

5:02:10:04. Instructions to absentee voters. All ballots mailed or delivered to absentee voters shall include instructions that read as follows:

TO THE VOTER:

- Mark your ballot privately.

Fill in the oval (●) next to the name or ballot question. Use only the pencil or marker given to you!

- (insert a statement regarding whether and how many times the ballot should be folded).
- Place your ballot in the return envelope and seal it securely.
- Complete the statement on the back of the return envelope and ~~(bold)~~ **SIGN IT** ~~(unbold)~~.
- Mail the ballot (voter must pay for postage to mail the ballot unless the voter is covered under the UOCAVA act), deliver it in person, or have someone deliver it for you to the

person in charge of the election. ~~(bold)~~ **Do not return absentee ballot to your polling place** ~~(unbold)~~.

- The ballot must be received by the person in charge of the election in time to transmit it to your precinct polling place before the polls close on election day.
- Additional information on absentee voting is available at www.sdsos.gov.

Printers Note: Use correct return time designation in sixth bullet point.

Source: 2 SDR 46, effective December 30, 1975; 5 SDR 31, effective November 1, 1978; 6 SDR 25, effective September 24, 1979; 8 SDR 24, effective September 16, 1981; 10 SDR 27, effective September 26, 1983; 12 SDR 43, effective September 23, 1985; 19 SDR 12, effective August 5, 1992; 31 SDR 35, effective September 23, 2004; 32 SDR 225, effective July 3, 2006; 35 SDR 306, effective July 1, 2009; 36 SDR 112, effective January 11, 2010; 45 SDR 9, effective July 30, 2018.

General Authority: SDCL 12-1-9(9).

Law Implemented: SDCL 12-19-4, 12-19-5, 12-19-41, ~~42~~ U.S.C. § 1973.

CHAPTER 5:02:10

ABSENTEE VOTING

Section

5:02:10:01 Application for absentee ballot.

5:02:10:01.01 Receipt for absentee ballot.

5:02:10:01.02 Guidelines for acceptance of facsimile absentee ballot applications from UOCAVA voters.

- 5:02:10:01.03 Combined absentee ballot application/return envelope.
- 5:02:10:01.04 Repealed.
- 5:02:10:02 Repealed.
- 5:02:10:03 Envelope for sending ballots to voter.
- 5:02:10:04 Instructions to absentee voters.
- 5:02:10:05 Official return envelope for ballots used in voting.
- 5:02:10:06 Official record of absentee ballots delivered to voters.
- 5:02:10:07 Repealed.
- 5:02:10:08 Envelopes for use with voting service and overseas ballots.
- 5:02:10:09 Nursing facility, assisted living center, or hospital absentee voting.

5:02:10:09. Nursing facility, assisted living center, or hospital absentee voting.

When the county auditor or the county auditor's designee is at a facility to conduct absentee voting, a resident who wishes to vote using an absentee ballot must be given an absentee ballot. The ballot must be filled out alone, yet in the presence of the auditor or the auditor's designee. Any notified person listed in SDCL 12-19-9.1 may also be present.

The auditor or the auditor's designee must be present during the entire time the absentee voting is being conducted.

The auditor or the auditor's designee shall give each resident of the facility who votes by absentee ballot the instructions in conformity with §5:02:10:01.03.

The ballot box used at a facility must be sealed at the auditor's office prior to transporting to a facility and may only be used for absentee voting at a facility.

While at the facility, the auditor or the auditor's designee shall place the completed absentee ballot into a ballot box. If the ballot box is used at more than one facility, the auditor must maintain a log of the facilities and the date of the voting.

The ballot box must be transported to the auditor's office by the auditor or the auditor's designee and secured in accordance with SDCL ch 12-20 and § 5:02:16:37.

Upon return to the auditor's office the ballots must be processed in the same manner as all in-person absentee ballots and stored in a secure storage area.

For purposes of this section, the term, facility, means a nursing facility, assisted living center, or hospital as defined in SDCL 34-12-1.1.

Source:

General Authority: SDCL 12-1-9(4)(9), 12-19-9.1.

Law Implemented: SDCL 12-19-9.1, 12-19-9.3.

CHAPTER 5:02:16

COUNTING AND CANVASSING OF BALLOTS

Section

- 5:02:16:00 Definitions.
- 5:02:16:01 Delivery of supplies to counting board -- Signing of certificate.
- 5:02:16:01.01 Ballot box security.
- 5:02:16:02 Signing of oaths.
- 5:02:16:03 Public vote count.

- 5:02:16:04 Use of tally sheets.
- 5:02:16:05 Comparison of registration list and pollbook.
- 5:02:16:06 Opening ballot box.
- 5:02:16:07 Folded ballots separated.
- 5:02:16:08 Duplicate ballots.
- 5:02:16:09 Drawing of excess ballots.
- 5:02:16:09.01 Endorsing of excess ballots.
- 5:02:16:10 Unstamped ballots.
- 5:02:16:11 Separation of ballots.
- 5:02:16:12 Order of vote counting.
- 5:02:16:13 Repealed.
- 5:02:16:14 Scrutiny of ballots by counting board.
- 5:02:16:15 Tally of ballots.
- 5:02:16:16 Repealed.
- 5:02:16:17 Repealed.
- 5:02:16:17.01 Write-in votes not counted.
- 5:02:16:17.02 Counting imperfectly marked paper ballots.
- 5:02:16:18 Repealed.
- 5:02:16:19 Repealed.
- 5:02:16:20 Repealed.
- 5:02:16:21 Voter's intent to be determined.
- 5:02:16:22 Repealed.
- 5:02:16:22.01 Use of prior court decision.

5:02:16:23	Repealed.
5:02:16:24	Repealed.
5:02:16:25	Unofficial returns of precinct vote.
5:02:16:26	Entry of precinct vote on unofficial return list.
5:02:16:27	Repealed.
5:02:16:28	Repealed.
5:02:16:29	Repealed.
5:02:16:30	Repealed.
5:02:16:31	Signing of certificates.
5:02:16:32	Repealed.
5:02:16:33	Procedure for placing voted ballots in the ballot box.
5:02:16:34	Return of unvoted ballots.
5:02:16:34.01	Return of duplicate ballots of one voter not counted.
5:02:16:35	Ballots voted but not counted.
5:02:16:36	Recapitulation sheet.
5:02:16:37	Sealing of ballot box.
5:02:16:38	Repealed.
5:02:16:39	Form of the paper seal.
5:02:16:40	Return and sealing of pollbook.
5:02:16:41	Pollbook envelope seal.
5:02:16:41.01	Return of duplicate tally sheet.
5:02:16:42	Return of election material.
5:02:16:43	Purpose of this chapter.

5:02:16:44 Provisional and uncounted absentee ballot return envelope.

5:02:16:01.01. Ballot box security.

The person in charge of the election may place a receptacle or container within the person's office for voters to return a voted absentee ballot. If a receptacle or container is used, the person in charge of the election, or the person's designated staff must ensure the receptacle or container is:

- (1) Visible to the public and staff at all times while in use, or is monitored by a security camera that is recording with the recording stored for at least twenty-two months;
- (2) Secured by a seal with a serial number or by a padlock. If a seal is used, the serial number must be recorded and compared at the time the receptacle or container is opened and ballots are removed from the receptacle or container for processing. If a padlock is used, the key must be secured so only the person in charge of the election or the person's designated staff have access to it;
- (3) Audited at least daily, to verify that the number of ballots received each day match the number of ballots shown as received in Total Vote; and
- (4) Emptied at least daily and the absentee ballot envelopes moved to a secure location in the office of the person in charge of the election that is only accessible to the person and to the person's designated staff.

Source:

General Authority: SDCL 12-1-9(4), 12-19-9.3.

Law Implemented: SDCL 12-19-9.3.