

D-1
Election Security

D-2
Kansas Open Meetings
Act

D-3
Kansas Open Records
Act

D-4
Post-election Audits

D-5
Voter Registration and
Identification

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Elections and Ethics

D-4 Post-election Audits

According to the National Conference of State Legislatures, 37 states and the District of Columbia currently require some form of a post-election audit.¹

What Is a Post-election Audit?

A post-election audit verifies the equipment and procedures used to count votes during an election worked properly, and the election yielded the correct outcome. Most audits look at a fixed percentage of voting districts or voting machines and compare the paper record to the results produced by the voting system.

In states that conduct post-election audits, most have included audit requirements and processes in statute.

Post-election Audit vs. Recount

Audits differ from recounts in that they are conducted regardless of the margins of victory, though audits can lead to a recount if errors are detected. A recount is a repeat tabulation of votes cast in an election that is used to determine the correctness of an initial count. Recounts will often take place in the event the initial vote tally during an election is extremely close.

What Is Audited?

Paper records used in an audit may include voter-marked paper ballots, voter-verified paper audit trails produced by direct-recording electronic voting machines (DREs), or paper ballot records produced by ballot-marking devices.

Types of Post-election Audits

There are three main types of audits implemented by states: traditional audits, risk-limiting audits, and procedural audits. See the chart at the end of this article for information on the type of audit each state has implemented.

Traditional Post-election Audits

Thirty-two states² and the District of Columbia conduct traditional audits, which are usually conducted manually by hand counting a portion of the paper records and comparing them to the electronic results produced by electronic voting machines. Some states, however, have a process where all or part of the audit can be conducted electronically. Additionally, some states that have implemented traditional audits use a tiered system,³ which means a different number of ballots are reviewed for each election contest, depending on the margin of victory for the race.

Risk-limiting Audits

Four states, Colorado, Nevada, Rhode Island, and Virginia, require risk-limiting audits, while California, Ohio, Oregon, and Washington provide counties with the option to utilize risk-limiting audits if they so chose.

A risk-limiting audit makes use of statistical principles and methods and is designed to limit the risk of certifying an incorrect election outcome. Election systems that use paperless, touchscreen ballots and do not require voter-verifiable paper records cannot be audited using this method.

Jurisdictions using this type of audit establish a risk limit, which is the largest chance that an incorrect reported tabulation outcome of a contest will not be corrected by the audit. For example, a risk limit of 10 percent means there is a 90 percent chance the audit will correct a wrong tabulation outcome. The chance that the audit will correct a wrong outcome is called the confidence interval. The larger the margin is in a race, the fewer ballots need to be counted to reach a given confidence interval. If the race is tighter, more ballots must be audited. In this way, risk-limiting audits are similar to traditional audits using a tiered system. Additionally, the lower the confidence interval, the more ballots must be counted to reach a given confidence interval.

If a risk-limiting audit meets a confidence interval and finds strong evidence that the reported outcome was correct, the audit is complete. If the

audit does not meet the confidence interval, the audit evolves into a full hand-count of ballots.

Procedural Audits

A procedural audit is a process for ensuring the correct processes and procedures were followed during the course of the election and may be conducted instead of or in addition to any other post-election audit. Procedural audits vary in their scope and comprehensiveness, but almost always include a ballot accounting and reconciliation process.

Post-election Audits under Certain Circumstances

Some state laws do not require a post-election audit to be conducted after every election, but only require them in certain circumstances. For example:

- Idaho conducts a post-election audit only when a recount is required (IC §34-2313); and
- Indiana requires a procedural audit if the total number of votes cast and the total number of voters in a precinct's poll book differ by five or more. A county chairman for a major political party may also request an audit for confirmation of votes cast (IC §3-11-13-37 *et seq.*, §3-12-3.5-8).

States with No Post-election Audits

Seven states do not conduct any type of audit. These states are: Alabama, Delaware, Louisiana, Maine, Mississippi, New Hampshire, and South Dakota.

Post-election Audits in Kansas

During the 2018 Legislative Session, the Legislature passed HB 2539, which required county election officers to conduct a manual audit or tally of each vote cast in 1.0 percent of all precincts, with a minimum of one precinct located

within the county. The audit requirements apply to all counties for elections occurring after January 1, 2019. The requirement for audit or tally applies regardless of the method of voting used. The bill specified these contested races will be audited:

- In presidential election years: one federal race, one state legislative race, and one county race;
- In even-numbered, non-presidential election years: one federal race, one statewide race, one state legislative race, and one county race; and
- In odd-numbered election years: two local races, selected randomly after the election.

A temporary rule and regulation concerning the conduct of post-election audits (KAR 7-47-1) was approved by the State Rules and Regulations Board at its meeting and became effective on June 26, 2019; a temporary rule and regulation may be effective for no more than 120 days. The Joint Committee on Administrative Rules and Regulations reviewed proposed KAR 7-47-1 at its meeting on August 6, 2019, and a public hearing on this proposed rule and regulation was scheduled for September 4, 2019. KAR 7-47-1 was published in the *Kansas Register* as a final rule and regulation on September 12, with an effective date of September 27, 2019. The rule and regulation contains the following provisions:

- Local question elections and mail ballot elections pursuant to KSA 25-431 are exempt from post-election audits;
- Defines “unofficial election night returns”;

- The Office of the Secretary of State (Office) will provide training to county election officers and county election officers will provide training to the election board;
- The random selection of races and precincts must be conducted in a public place and the randomized selection procedure will be determined solely by county election officers and the Office;
- Audit results must be submitted to the Office and county election office no later than 48 hours before the meeting of the county board of canvassers;
- In even-year elections, the list of randomly selected races to be audited must be transmitted from the Office to county election officers within 24 hours of the closing of the final polling location in Kansas;
- Once a county election officer has determined an auditable race, 1.0 percent of the total county precincts will be randomly selected from the subset of auditable precincts;
- If there is no contested race, the election board will audit the first race listed;
- In odd-year elections, county election officers will randomly select the races and precincts to be audited; and
- Ballot images may be used for a manual audit if such imaging technology exists during the tabulation process on election night.

Table of Post-election Audits by State		
<i>Note: Table only contains information on states that conduct post-election audits.</i>		
State	Audit Type	Statutes
Alaska	Traditional	AS § 15.15.420 - § 15.15.450; § 15.10.170
Arizona	Traditional	ARS § 16-602; State of Arizona Elections Procedures Manual
California	Traditional with option to conduct risk-limiting beginning 2020	CEC § 336.5; § 15360; § 15365 <i>et. seq.</i>
Colorado	Risk-limiting	CRSA § 1-7-515; Colorado Secretary of State Election Rule 25; 8
Connecticut	Traditional	CGSA § 9-320f
District of Columbia	Traditional	DCCA § 1-1001.09a
Florida	Traditional	FSA § 101.591
Georgia	Traditional	GCA § 21-2-498
Hawaii	Traditional	HRS § 16-42, Hawaii Administrative Rules § 3-172-102

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Idaho	Other	IC § 34-2313
Illinois	Traditional	10 ILCS § 5/24A-15; § 5/24C-15
Indiana	Other	IC § 3-12-13; § 3-12-14; § 13-12-3.5-8
Iowa	Traditional	ICA § 50.51
Kansas (a)	Traditional	KSA § 25-3009
Kentucky	Traditional	KRS § 117.305; § 117.383; § 117.275(9)
Maryland	Traditional	MD Code, Election Law § 11-3093; Code of Maryland Regulations § 33.08.05.00 <i>et seq.</i>
Massachusetts	Traditional	MGLA 54 § 109A
Michigan	Traditional and Procedural	MCLA § 168.31a; Post-election Audit Manual
Minnesota	Traditional	MSA § 206.89
Missouri	Traditional	15 CSR § 30-10.090; § 30-10.110
Montana	Traditional	MCA § 13-17-501 - § 13-17-509
Nebraska (b)	Other	Nebraska Secretary of State's Office
Nevada	Traditional	2019 SB 123; NAC 293.255
New Jersey (c)	Traditional	NJSA § 19:61-9
New Mexico	Traditional, with a tiered system based on the margin of victory	NMSA § 1-14-13.2 <i>et seq.</i> ; NMAC 1.10.23
New York	Traditional	NY Elect. § 9-211; 9 NYCRR 6210.18
North Carolina	Traditional	NCGSA § 163-182.1
North Dakota	Other	NDCC § 16.1-06-15
Ohio	Traditional, with risk-limiting audits recommended	Secretary of State Directive 2017-14; OH ST § 3506.14;
Oklahoma	Traditional	OKC § 26-3-130
Oregon	Traditional, with a tiered system based on the margin of victory	ORS § 254.529; ORS § 254.535
Pennsylvania	Traditional	25 PS § 3031.17 § 2650
Rhode Island	Risk-limiting	RI ST § 17-19-37.4
South Carolina	Other	South Carolina Election Commission – Description of Election Audits in South Carolina
Tennessee	Traditional	TCA § 2-20-103
Texas	Traditional	VTCA § 127.201; Election Advisory No. 2012-03
Utah	Traditional	Election Policy Directive from the Office of the Lieutenant Governor; UCA § 20A-3-201
Vermont	Traditional	17 VSA § 2493; § 2581 - § 2588
Virginia	Risk-limiting	VCA § 24.2-671.1
Washington	Traditional, with option of conducting a risk-limiting audit	RCW § 29A.60.170; § 29A.60.185; WAC 434-262-105
West Virginia	Traditional	WVC § 3-4A-28
Wisconsin	Traditional	WSA § 7.08(6); Wisconsin Elections Commission 2018 Voting Equipment Audits
Wyoming	Other	WS 22-11-104; Wyoming Administrative Rules Secretary of State Election Procedures, Chapter 25
(a) <i>Note:</i> These provisions apply to Kansas elections held after January 1, 2019.		
(b) <i>Note:</i> Nebraska does not have a statutory requirement or rules and regulations for post-election audits, but they may be conducted by the Office of the Secretary of State.		
(c) <i>Note:</i> New Jersey currently does not have machines that produce a paper record and therefore cannot yet conduct an audit.		

- 1 Post-Election Audits. (2019, August 5). Retrieved from <http://www.ncsl.org/research/elections-and-campaigns/postelection-audits635926066.aspx>.
- 2 Alaska, Arizona, California, Connecticut, Florida, Georgia, Hawaii, Illinois, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, and Wisconsin.
- 3 New Mexico and Oregon.

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