

DIRECTIVE 2008-40
March 28, 2008

To: ALL COUNTY BOARDS OF ELECTIONS

Re: Recount Procedures

This directive sets forth circumstances and procedures for recounts following the official certification of the results of an election.

I. OVERVIEW OF WHEN A RECOUNT MUST BE CONDUCTED:

A. Automatic Recount (R.C. 3515.011)

1. Automatic recounts in district, countywide and local elections:

An automatic recount is required in any district (federal, state or local), county, municipal or township election if the margin of difference between votes cast for the declared winning nominee, candidate, question, or issue and the declared losing nominee, candidate, question, or issue is equal to or less than one-half of one percent of the total votes cast on the race or issue. The board of elections orders the recount for county, municipal, township, school district, question, and local issue elections. The Secretary of State orders the recount for all other elections. (See "Section II" below).

2. Automatic recounts in statewide elections:

An automatic recount is required in any statewide election if the margin of difference between votes cast for two or more statewide candidates for the same race or between votes on a state issue is equal to or less than one-fourth of one percent of the total vote cast on the race or issue. The Secretary of State orders the recount for any statewide election.

B. Requested Recount (R.C. 3515.01)

1. A requested recount is appropriate only if a recount of the race is not mandated by R.C. 3515.011.

2. Requested recounts in district, countywide and local candidate elections:

Any candidate who was not declared nominated or elected may request, by a written application accompanied by the appropriate monetary deposit, a recount of the votes cast in the race in question in any precinct in which he or she was a candidate. The application must be filed no later than five days after the official results are certified by the county board of elections (or the most populous county in the case of a district located in more than one county). (See "Section III" below).

3. Requested recounts in issue elections in a district, political subdivision or county:

Any group of five or more qualified electors who declare that they voted “for” a question or issue that was defeated, or “against” a question or issue that passed, may request, by a written application accompanied by the appropriate monetary deposit, a recount of the votes cast on the question or issue in any precinct in which that question or issue was on the ballot. The application must be filed no later than five days after the official results are certified by the county board of elections (or the most populous county in the case of a district located in more than one county). The group filing for the recount must designate, in its application, one of its members as the group’s chairperson.

C. Scheduling a Recount – Providing Written Notice (R.C. 3515.03)

Upon the filing of an application for a requested recount, or upon declaration by the board of elections or secretary of state that the results of any candidate or issue election mandates an automatic recount, the board shall promptly fix the time, method, and the place at which the recount will be made, which time shall not be later than 10 days after the day such application is filed or such declaration is made.

No later than five days after a recount application is filed or an automatic recount declaration is made, the board must give written notice of the time and place of the recount to all persons entitled to receive notice. Each person for whom votes were cast in the election, which is the subject of the recount, shall receive notice. For question or issue elections, the chairperson of the group of electors that applied for the recount shall receive notice. If there is an opposing committee or identifiable group of electors in opposition to the group of electors that applied for the recount, it is advisable to notify an identifiable representative of such opposing group of the time and place of the recount.

There must be at least five days notice of a recount unless such notice is waived by all persons entitled to receive notice. Thus, a recount cannot be held sooner than the fifth day after the board certifies the election results unless everyone entitled to receive notice waives, in writing, the five-day notice provision.

II. AUTOMATIC RECOUNT - DETERMINING ONE-HALF OF ONE PERCENT: (R.C. 3505.011)

A. When One Candidate Is To Be Elected

Where there are two or more candidates for a single office but only one is to be elected, such as county auditor, the votes for all candidates in that race are added together to obtain the total vote. For example:

Candidate A	2,845 votes	(declared elected)
Candidate B	2,815 votes	(defeated)
Candidate C	2,795 votes	(defeated)

The total vote for the office is 8,455. Of that total, $\frac{1}{2}$ of 1% is 42 votes. Candidate A defeated Candidate B by 30 votes, which is less than $\frac{1}{2}$ of 1%. Candidate A defeated Candidate C by 51 votes, which exceeds $\frac{1}{2}$ of 1% of the total vote cast for the office of county auditor. However, because one of the defeated candidates was within the $\frac{1}{2}$ percent margin, the entire race is automatically recounted.

B. When Several Candidates Are To Be Elected

In a case where several candidates are to be elected, the term “declared winning candidate” in the statute refers to the candidate(s) whose election is disputed rather than to all of the candidates for the particular office. Using the example below, if five candidates seek election as council members-at-large, with three to be elected, only the votes cast for Candidates 3, 4 and 5 are regarded as the “total votes” cast for the third council seat in computing the margin for an automatic recount. For example:

Candidate 1	4,200 votes	(elected)
Candidate 2	4,100 votes	(elected)
Candidate 3	2,300 votes	(declared elected)
Candidate 4	2,275 votes	(declared defeated)
Candidate 5	2,250 votes	(defeated)

Do not include the votes cast for Candidates 1 and 2 in computing the total vote for the third council seat because, based on the margin of victory, their election is not in dispute.

The votes cast for Candidates 3, 4 and 5 total 6,825. Of that total, $\frac{1}{2}$ of 1% is 34 votes.

- Candidate 3 defeated Candidate 4 by 25 votes, which is less than $\frac{1}{2}$ of 1%.
- Candidate 4 defeated Candidate 5 by 50 votes, which exceeds $\frac{1}{2}$ of 1% of the total vote cast for the third council seat.

Thus, an automatic recount must be ordered on the basis of the margin of votes cast for Candidates 3 and 4. Only the votes for Candidates 3, 4 and 5 are recounted, not all five candidates.

C. Automatic Recounts In Multi-County Districts

When a board of elections in the most populous county of a multi-county election district orders an automatic recount in an election overlapping several counties, each county board of elections in the district must conduct a recount in its county for the election in question pursuant to the procedures in this directive. Each county board of elections in the district shall then report the results of the recount to the board of elections in the most populous county.

III. REQUESTED RECOUNT - APPLICATION FOR A RECOUNT:

A. Written Application for a Requested Recount (R.C. 3515.01, 3515.02, 3515.03)

R.C. 3515.01 provides that a recount of the election results certified by a board of elections may be requested as follows:

1. Candidate election: A candidate who was not declared nominated or elected (i.e., was defeated) in a race may make written application to the appropriate election officials for a recount of votes cast in that race in some or all of the precincts where that race was submitted to the voters.
2. Issue election: A group of five voters who voted opposite to the certified result (i.e., if the question or issue passed, they voted against it, or vice versa) may file a written application with the appropriate election officials for a recount of votes cast on that issue in all or some of the precincts where that issue was submitted to the voters.

Pursuant to R.C. 3515.02, the defeated candidate or group of voters must file a written application requesting the recount with the appropriate election officials within five (5) days after the board of elections certifies the official canvass of the election results, as follows:

- For elections within the county: the county board of elections.
- For multi-county district elections: the board of elections of the most populous county.
- For a statewide election: the Secretary of State.

Because R.C. 3515.03 requires an applicant for a requested recount to name each precinct to be recounted, the definition of “randomly select” in Section VI.A.10 of this directive only applies to requested recounts in situations where the number of precincts named in the application exceeds 3% of the total vote cast in the election to be recounted. In such case, the board shall follow the definition of “randomly select” in Section VI.A.10. of this directive to select the initial precincts to be hand counted in order to determine whether or not the entire requested recount must be a hand count.

B. Deposit (R.C. 3515.03)

1. The applicant(s) must file a deposit of \$50 in (currency, bank money order, bank cashier's check, or certified check) for each precinct to be recounted with the application.
2. The board shall deposit all moneys received from an applicant in a special depository fund with the county treasurer. The expenses of the recount and refunds shall be paid from that fund upon order of the board of elections. Any balance remaining in that fund that has not been spent for the recount or refunded to the recount applicant shall be paid into the general fund of the county.
3. The deposit serves as security to cover the cost of the recount. If all requested precincts are not counted, any unused balance is refundable to the applicant(s).

C. Assessing recount charges (R.C. 3515.07)

1. Calculating the charges

The board of elections calculates the charges for making the recount, including all expenses incurred by the board because of the application, but *excluding* the regular operating expenses that the board would have incurred if the application had not been filed.

The quotient of the total amount of charges so calculated and fixed, divided by the number of precincts for which votes were counted and which were listed in the application, shall be the charge per precinct for the recount of the votes of the precincts actually recounted and which were listed in the application. The charges per precinct shall not be more than \$50 nor less than \$5 for each precinct in which the votes were recounted.

The board shall deduct the charge per precinct from the money deposited by the applicant, and the board shall refund to the applicant the balance of the money so deposited.

2. When charges shall not be assessed

No such charge per precinct shall be deducted from the recount deposit in the following circumstances:

- a. Upon the completion of the recount of a candidate nomination or election in any precinct, if either of the following occurs:
 1. The total number of votes cast in such precinct for the applicant, as recorded by the recount, is more than four (4) percent larger than the number of votes for the applicant in that precinct recorded in the original certified abstract, or
 2. The applicant is declared nominated or elected.
- b. Upon the completion of the recount of an issue election in any precinct if either of the following occurs,
 1. The total number of votes in that precinct on the same side of that issue as the side represented by the applicant, as recorded by the recount, is more than four (4) percent larger than the number of votes in that precinct on the same side of that issue recorded in the original certified abstract, or
 2. The result of that issue election is declared to be opposite to the original declaration of the result of that issue election.

IV. BEFORE THE RECOUNT:

A. Establish Time of the Recount (R.C. 3515.03)

No recount shall be held prior to the official canvass and certification of the election. The board members must fix the time, method and place of the recount. Accounting for the five-day notice requirement (*see B, immediately below*), a recount must be held within 6 to 10 days after the declaration of official results or after an application is filed.

B. Notice To Candidates/Issue Committees (R.C. 3515.03)

The director of a board of elections conducting a recount shall notify all candidates in the race or the chairperson of the committee or group of persons named in a recount application for an issue election to be recounted *of the time and place for the recount and shall do so by certified mail*. Such notice of the time and place for the recount shall be provided at least five (5) days before the recount is to be held.

In the case of a recount of votes cast upon a question or issue, any group of five or more qualified electors who voted upon such question or issue and whose votes were in opposition to the votes of the members of the group of electors who applied for the recount, or for whom the recount was required by section 3515.011 of the Revised Code, may file with the board a written statement to that effect, shall designate one of their number as chairperson of such group, may appoint an attorney at law as their legal counsel, and may request that the persons so designated be permitted to attend and observe the recount. Such persons also are entitled to notice of the recount.

C. Observers (R.C. 3515.03; Directive 2008-29 at section II.C, p. 10)

1. Each candidate in the race to be recounted may attend and observe the recount and may designate one other person, not necessarily an elector, to also observe on his or her behalf.

2. The chairperson of a committee or group of persons named in a recount application for an issue election being recounted may attend and observe the recount, as may the attorney for that group, if applicable.
3. An observer may freely observe the recount as set forth in Directive 2007-29, but shall neither interfere with the recount nor touch the ballots.
4. Appointments of observers must be in writing signed by the candidate or ballot issue chairperson.

V. STOPPING A RECOUNT:

A. Before a Mandatory Recount Starts (R.C. 3515.03)

At anytime after a recount is ordered pursuant to R.C. 3515.011, but before the recount is held, the declared losing candidate or issue chairperson for a losing side may file a written request to stop the recount. If more than one losing candidate is entitled to the recount each of the candidates must file such written request to stop the recount. In such case, and in the case of only one losing candidate, the board must grant the request.

B. After the Recount Starts (R.C. 3515.04)

At any time during a recount, the declared losing candidate or candidates or the issue chairperson for the losing side may file a written request to stop the recount. If the board finds that results of the recount at that point will not change the official results, the recount is stopped. If the board finds otherwise, the request to stop recounting must be denied and the recount continued until all ballots from the precincts involved have been recounted.

VI. RECOUNT PROCEDURES: (R.C. 3515.04, 3506.18, 3501.05)

A. All Voting Systems

1. The recount must be conducted by teams having equal numbers of members of the major political parties.
2. The total number of votes cast, in the candidate races and question or issue elections being recounted must be compared to the number of voters listed in the poll book, poll list, or signature poll book records by a team of at least two election officials, with each team having an equal numbers of members of the major political parties, including among the election officials conducting the comparison. These records must be available for visual inspection by observers. The observers shall not be permitted to handle the records.
3. Ballots must be checked for proper candidate position and to verify that each candidate's race or a question or issue has been properly identified. Observers may observe the inspection of the ballots.
4. Regular absentee ballot envelopes returned *after the statutory deadline* may be viewed by the observers. An observer may *not* see the actual ballot, only the envelopes, which must be sealed.
5. Ballots must be handled only by the members of the board of elections, its director, deputy director or other designated employees of the board.

- 4.6. Disputed ballots may be settled by the board or by a majority of the employees designated as teams, if so delegated by the board, as such disputes arise. The best practice is for the board, itself, to resolve such disputes.
7. Votes cast for write-in candidates must be verified to determine (1) the candidate is a qualified write-in candidate, and (2) that the ballot has not been overvoted.
 8. The Board must randomly select whole precincts whose total equals at least 3% of the total vote.
 9. The ballots for these precincts will then be manually hand counted.
 10. For the purposes of this directive, “randomly select” means the following:
 - Whole precincts shall be selected for recount.
 - Enough precincts shall be selected for recount whose total votes cast, when taken together, equals at least 3% of the total votes cast in the election at issue.
 - **To select the first precinct for the recount, follow these steps:**
 - **Step 1:** make an alphabetical list of all the named political subdivisions within the election district or race to be recounted (for example, if a county office race will be recounted, list of all the political subdivisions within the county in alphabetical order);
 - **Step 2:** draw, by lot, one of the named political subdivision from the alphabetical list created in Step 1 (“by lot” means to select one of the political subdivisions randomly, such as by placing all the names from the list in a hat and selecting one);
 - **Step 3:** create a numerical or alphabetical list of all precincts in the political subdivision selected under Step 2 that are within the election district to be recounted;
 - **Step 4:** draw, by lot, one of the precincts from the list created in Step 3. The precinct selected in Step 4 is the first precinct included in the hand recount.

If the precinct selected in Step 4 equals at least 3% of the total votes cast, you are not required to select another precinct for the first manual recount.

- **If additional precincts are required to reach the 3% threshold, follow these steps to select subsequent precincts:**
 - **Step 5:** proceed to the next political subdivision after the political subdivision selected in Step 2 on the alphabetical list;
 - **Step 6:** determine the next higher precinct number, letter, or combination thereof, if any, after the precinct number selected in Step 4. This precinct number for the political subdivision selected in Step 5 will be the next precinct hand counted for the recount.
 - ***Please note:*** If there is no precinct number, letter, or combination thereof higher than the precinct number selected in Step 4, the next precinct chosen

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shall be from the lowest precinct number, letter, or combination thereof from the next political subdivision on the alphabetical list created in Step 1. If there are no more political subdivisions remaining on the list, the next precinct chosen shall be from the lowest precinct number, letter, or combination thereof from the first political subdivision on the alphabetical list.

- **Step 7:** If the two precincts selected from Steps 1 through 6 do not equal at least 3% of the total votes cast in the election at issue, repeat Steps 5 and 6 – using the most recently selected political subdivision and precinct number as the base – until enough precincts are selected. For example, the third precinct would be from the next political subdivision after the name of the second selected political subdivision on the alphabetical list. The precinct number would be the next higher number, letter, or combination thereof from the precinct number selected for the second political subdivision.

Example:

Assume a race for a Franklin County office must be recounted. To select the precincts for the 3% hand recount, the board must first make an alphabetical list of all political subdivisions in the county that had precincts voting on the race (Step 1). The board then selects one of those political subdivisions by lot (Step 2). For purposes of this example, assume the board selects the city of Columbus as the first political subdivision. The board must then make a list of all precincts in the city of Columbus (Step 3). Finally, the board must select one of those precincts by lot (Step 4). Assume the board selects Columbus 3-A. Columbus 3-A is therefore the first precinct that will be hand counted.

If Columbus 3-A does not equal 3% of the total vote cast, the board must select subsequent precincts to equal at least 3% of the vote. The board determines the next political subdivision on the alphabetical list after Columbus (Step 5). For purposes of this example, assume the next political subdivision on the list is the city of Dublin. The board then determines the next higher precinct number, letter, or combination thereof from the precinct number selected in Step 4 (Step 6). Because the precinct selected in Step 4 was 3-A, the next higher precinct number, letter, or combination of both would be 3-B. Therefore, the next precinct to be hand counted would be Dublin 3-B.

If there is no precinct numbered 3-B in Dublin, the next precinct selected would be the next higher letter, number, or combination thereof, such as Dublin 4-A. If there is no Dublin 4-A (because there are no more precincts in the city of Dublin after 3-B), the next precinct selected would be the first precinct in the next political subdivision on the alphabetical list, such as Gahanna 1-A.

Important Points to Remember:

- If there is only one political subdivision in the election district to be recounted (e.g., a township office), only Steps 3 & 4 should be followed to select the first precinct number to be hand counted. Any additional precincts shall be selected by proceeding to the next higher precinct letter, number, or combination thereof. If there is no higher precinct in any political subdivision, choose the lowest alpha-numeric precinct in that subdivision that has not already been selected for the recount.

- If one precinct has been chosen from each political subdivision in the election district, and the sum of total votes cast remains less than 3% of the total votes cast in the election district, the board shall proceed by continuing to follow the alphabetical list in selecting a political subdivision but simply select the next higher precinct letter, number, or combination thereof from that previously selected in the political subdivision. If there is no higher precinct in any political subdivision, choose the lowest alpha-numeric precinct in that subdivision that has not already been selected for the recount.

B. Optical Scan Machines

1. Test the Program

- a. Prepare a test deck of ballots that are pre-marked and manually count them.
- b. Run the test deck through the tabulator to verify that the tabulator total matches the hand count. (Be sure to reset vote totals to zero when test is complete so your recount totals are correct)

2. The Recount

- a. Ballots must be inspected for mutilations and other invalidities.
- b. Ballots must be checked for proper candidate position and to verify that each candidate or issue has been properly identified.
- c. The board must randomly select one or more whole precincts, the sum of whose total votes cast equals at least 3% of the total votes cast for the election being recounted. (Refer to Section VI. A. 10. above to determine how to randomly select precincts)
- d. The board must then undertake the following steps in the order listed:

1. Perform a hand count of the ballots in the randomly selected precincts. If the recount involves only one precinct, the entire precinct shall be hand counted.

2. Run the hand counted precincts through the tabulator. (For Hart eScan voting system counties use results from the official canvass in the precincts that were hand counted since ballots cannot be rescanned through the tabulator).

3. If the tabulator count does not match the hand count with a difference of 2 or less votes, and after rechecking the hand counted results the two results (hand count and machine tabulated) are still *not* equal, another 3% of the total votes cast for the candidate's race, question or issue being recounted must be hand counted. The additional 3% must be additional precincts randomly selected using the procedure set forth in Steps 2 through 7, continuing sequentially from the first 3% that was randomly selected for the post election audit. If the hand count and the machine tabulator count are still *not* equal, *all ballots for the candidate's race, question or issue being recounted must be hand counted*. If a comparison of the results of the tabulator count and the hand counted ballots in the second batch are equal, and the difference between the hand count and the machine count in the first batch is no more than 2 votes, the remainder of the ballots may be processed through the tabulator. (Hart eScan counties may use the totals from the official canvass for the remaining precincts). Otherwise, all ballots for the candidate's race, question or issue to be recounted shall be hand counted.

4)4. At the conclusion of the recount, the program must be retested using the pre-marked, pre-audited test stack of ballots.

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C. Direct Record Electronics (DRE) Voting Machines

In accordance with R.C. 3506.18, the voter verified paper audit trail (VVPAT) serves as the official ballot to be recounted.

1. Verify VVPAT

- a. The board must randomly select one or more precincts the sum of whose total votes cast equals at least 3% of the total votes cast for the candidate races or question or issue elections being recounted. (Refer to Section VI. A. 10. above to determine how to randomly select precincts)
- b. For each candidate or question or issue election to be recounted, a hand count of the vote for each voting unit used in the randomly selected precincts for the recount must be made by physical examination and hand count of the VVPAT roll. The hand count must then be compared to the recorded summary that appears at the end of the VVPAT for that candidate or question or issue election. A record of the comparison must be made for each voting unit. If there is no difference between a hand count and the VVPAT summary, the VVPAT summary shall be presumed to be the accurate count for the voting unit for the candidate or question or issue election being recounted.
- c. If any comparison of a voting unit's hand count and VVPAT summary results in a difference between the hand count and recorded summary, it must be determined if a hand counting mistake has occurred. If it is determined that no counting mistake has occurred, the hand count of the VVPAT shall be taken to be the accurate count for the voting unit, and the board shall provide written notice to the secretary of state of any such discrepancy occurring between a hand count and VVPAT recorded summary for a voting unit.

2. The Recount

- a. If the recount involves only one precinct, a hand recount must be conducted.
- b. Check the public counters to verify that the numbers on those counters correspond to numbers on the VVPAT and the pollbook, poll list, or signature pollbook records.
- c. VVPATs must be inspected for mutilations and other invalidities.
- d. VVAPT's must be checked for proper candidate, question or issue position and to verify that each candidate's race, question or issue has been properly identified.
- e. The board must randomly select one or more whole precincts, the sum of whose total votes cast equals at least 3% of the total votes cast for the election being recounted.
- f. The board must then undertake the following steps in the order listed:
 - 1) Perform a hand count of the VVPATs in the randomly selected precincts.

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- 2) Compare the totals from the hand counted VVPATs to the results of the Official Certification.
- 3) If the Official Certification does not match the hand count with a difference of 2 or less votes, and after rechecking the hand counted results the two results (hand counted and machine tabulated) are still not equal, another 3% of the total votes cast for the election being recounted must be hand counted. The additional 3% must be additional precincts randomly selected using the procedure set forth in Steps 2 through 7 set forth under All Voting Systems procedures above, continuing sequentially from the first 3% that was randomly selected for the post election audit. If the hand count and the machine tabulator count are still *not* equal, *all ballots for the candidate's race, question or issue being audited must be hand counted*. If a comparison of the results of the tabulator count and the hand counted ballots in the second batch are equal, and the difference between the hand count and the machine count in the first batch is no more than 2 votes, counties may use the totals from the official canvass for the remaining precincts. Otherwise, all ballots for the candidate's race, question or issue to be audited shall be hand counted.

VII. POST-RECOUNT ACTIONS:

A. Board of Elections' Duties (R.C. 3515.05)

Upon completion of the recount or upon stopping the recount prior to such time, the board of elections shall promptly prepare and certify an amended abstract showing the votes cast in each precinct in its county in which the candidacy or issue was submitted to electors, and the amended abstract shall embody the votes of the precincts, the ballots of which were recounted, as shown by such recount. The board shall mail copies of the certified amended abstracts to such other boards or election officials as it was required to in the case of the original abstract that is amended by the results of the recount.

The board shall make an amended declaration of the result of such election in the same manner required in the making of its original declaration of the result of such election.

B. Remedies by Candidates/Issue Groups Affected by Partial Recounts (R.C. 3515.06)

1. Candidates

If, pursuant to R.C. 3515.04, a person who was originally declared nominated or elected subsequently appears by the amended declaration of the results made following a recount to be not so nominated or elected, that person may, within five (5) days after the date of such amended declaration of the results of such election, file an application with the board of elections for a recount of the votes cast at such election for such nomination or election in any precinct, the ballots of which have not been recounted. Any such recount shall be conducted in the manner provided herein.

2. Issues

If, following a recount of votes cast in an election upon any issue, the amended declaration of the results of the election shows the result to be contrary to the originally declared result, any group of five or more qualified electors which has filed a statement with the board as provided in the third paragraph of R.C. 3515.03 may, within five (5) days after the date of the amended declaration, file an application with the board for a recount of the votes cast at such election upon such question or issue in any precinct of the county, the votes of which

have not been recounted. Any such recount shall be conducted in the manner provided herein.

VIII. CONCLUSION

The procedures described in this Directive are the basic requirements for conducting a recount. If a majority of the members of a board of elections believes the results warrant further investigation at any period during the conduct of the recount, it may institute more rigorous recounting procedures. In such an event, the board shall document its procedures and retain such documentation with the ballots recounted and other related forms and documents relating to the recount.

If you have any questions, please feel free to contact your assigned election attorney.

Sincerely,

Jennifer Brunner