

DIRECTIVE 2009-07
May 21, 2009

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 or local), county, municipal, or township election if the 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 (0.5%) of the total votes cast on the race or issue.

a. **Candidates.** The board of elections in the county where the candidate petition was filed is responsible for ordering the recount of candidate races for:

- i. County, municipal and township offices, and
- ii. District offices (including representative to the U.S. House of Representatives, member of the Ohio General Assembly, board of education) of districts wholly contained within that county.

b. **Issues.** The board of elections in the county in which the question or issue was filed is responsible for ordering the recount of elections on county, municipal, township and school district issue and local option questions.

The Secretary of State is responsible for ordering the recount for all other district elections for candidates and issues.

2. Automatic Recounts in Multi-County District

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.

3. Automatic recounts in statewide elections:

An automatic recount is required in any statewide election if the 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 (0.25%) of the total votes cast on the race or issue.

The Secretary of State is responsible for ordering 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 the nominee, or was not 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 with the appropriate county board of elections no later than five days after the official results are certified by the county board of elections (or by the most populous county in the case of a district located in more than one county).

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 with the appropriate county board of elections 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 appropriate 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 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 that 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 give notice of the time and place of the recount to an identifiable representative of such opposing group.

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 may not be held sooner than the fifth day after the board certifies the election results unless all persons entitled to receive notice waive, in writing, the five-day notice provision.

II. AUTOMATIC RECOUNT - DETERMINING ONE-HALF OF ONE PERCENT (R.C. 3515.011)

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 ($8,455 \times 0.005$). 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 votes 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 ($6,825 \times 0.005$).

- 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 votes 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.

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 the nominee or elected 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 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 total number of voters who voted on the race or issued to be recounted in the precincts named in the application exceeds 5% 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 with the application a deposit of \$55 in currency, bank money order, bank cashier’s check, or certified check for each precinct to be recounted.¹
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

¹ Pursuant to R.C. 3515.072, effective February 25, 2009, the minimum per precinct security deposit was increased from \$50.00 per precinct to \$55.00 per precinct. See Advisory 2009-03.

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 listed in the application. The charges per precinct shall not be more than \$55, or less than \$5, for each precinct in which the votes were recounted.²

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 are not to be assessed

No 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 percent (4%) 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 percent (4%) larger than the number of votes in that precinct on the same side of that issue recorded in the original certified abstract, or

² Pursuant to R.C. 3515.072, effective February 25, 2009, the maximum per precinct charge for a recount was increased from \$50.00 per precinct to \$55.00 per precinct. The minimum per precinct charge remained \$5.00 per precinct. See Advisory 2009-03.

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 Date and 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. Because five days notice is required (see B, immediately below), a recount must be held within six to ten days after the declaration of official results or after an application is filed.

B. Notice To Candidates/Issue Committees/Taxing Authority (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, 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. Persons entitled to receive the mailed notice may waive their right to receive a mailed notice by providing the director a written waiver to that effect.

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.

In addition, in the case of an automatic recount of votes cast upon a question or issue, the taxing authority that submitted the resolution or ordinance to the board of election or the petitioner that filed a petition for a question or issue should be provided a notice of the recount.

Additionally, each board of elections must give public notice of the time and place of the recount in the same manner that the board notifies the public of a board of elections meeting.

C. Open to Observers and Public (R.C. 3515.03; Directive 2008-29)

All recounts must be conducted in an open and transparent manner. To that end, Ohio law provides that duly appointed observers may be present for any recount to enhance voter confidence through a transparent process. Observers for recounts are governed by R.C. 3515.03 and 3505.21, as well as Directive 2008-29.

The following persons may observe the conduct of a recount:

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. As set forth in Directive 2008-29, a candidate may also designate an attorney to observe the recount.

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 2008-29, 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, and submitted no later than five days following board notification of the date and time of the recount to be conducted.

The rights of the public during a contemporaneous recount are not as extensive as those for duly appointed observers, as is outlined in R.C. 3505.21 for observers at the board of elections office and as explained in Secretary of State Directive 2008-29.

Throughout a recount, ballots may only be handled by boards of elections members, directors, deputy directors, or other designated employees of the boards. No observer or member of the public may handle a ballot or any other election materials.

V. STOPPING A RECOUNT:

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

At any time 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 a written request to stop the recount. In that case, and in the case where there is 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 must be stopped. If the board finds otherwise, the request to stop recounting must be denied and the recount must continue 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. Recount preparation includes the following steps for reconciliation of paper ballots for precincts randomly selected for the recount and/or for all ballots cast, where applicable:

- a. select the precincts to be used in the recount (see subsequent procedures for making such random selection);
- b. make available for inspection, upon request of observers or members of the public, receipts or other documents used to order or receive paper ballots that have been ordered from printers, including ballot stock used for ballot on demand machine ballot production, that show the total number of ballots and/or ballot stock ordered for the precincts included in the recount

(including absentee voting) to document an original number of ballots printed for each precinct included in the recount. Photocopied ballots and ballot remakes should be included in this number and itemized as such per precinct that is included in the recount;

c. make available for inspection, upon request of observers or members of the public, documentation that shows for the precincts included in the recount the number of ballots voted, spoiled and unvoted, including absentee and provisional ballots and photocopied ballots and ballot remakes, with itemization by type of ballot per precinct that is included in the recount;

d. make available for inspection, upon request of observers or members of the public, documentation that shows for all absentee ballots and individually for the precincts included in the recount, where applicable, subtotals of numbers by the type of absentee ballot (regular absentee, provisional absentee, military absentee and overseas absentee) for each total:

- the number of absentee ballots printed, whether by a printer or through ballot on demand,
- the number of absentee ballots mailed,
- the number of absentee ballots voted in person,
- the number of absentee ballots returned unvoted,
- the number of absentee ballots returned voted,
- the number of absentee ballots returned voted but returned and/or received after the applicable statutory deadline,
- the number of absentee ballots rejected and not counted, even if returned,
- the number of absentee ballots with ID envelopes containing errors that prevented the counting of such ballots, and
- the number of absentee ballots with ID envelopes containing errors that were corrected by a voter within the 10-day period after the election and able to be counted.

e. make available for inspection, upon request of observers or members of the public, documentation that shows the number of provisional ballots printed, whether by a printer or through ballot on demand, the number of provisional ballots voted, and the number of provisional ballots that were supplemented by the voter with required ID within the 10-day period after the election.

2. Recount preparation includes the following steps for verifying the ballot production for direct recording electronic, AutoMark and optical scan (whether precinct-based or central count) vote tabulation machines for precincts randomly selected for the recount:

a. select the precincts to be used in the recount (see subsequent procedures for making such random selection). Only one selection process is necessary for both VVPAT and optical scan paper ballots for the same selected precincts for the recount;

b. make available for inspection, upon request of observers or members of the public, documentation that shows (1) whether the ballot for the race(s) or issue(s) being recounted were programmed in-house and by whom, or through an outside service such as an agent of a voting machine manufacturer or servicing company and by which individual(s), and (2) when programming took place and how many times programming occurred for the machines in question for the election; and

c. make available for inspection, upon request of observers or members of the public, documentation that shows when and by whom the voting machines of precincts randomly selected for the recount in question were logic and accuracy tested.

3. The recount must be conducted by teams of elections officials equally divided among the state's two major political parties (e.g., 2, 4, 6, etc.).

4. A recount team of at least two election officials must compare the total number of votes cast in the candidate races and question or issue elections being recounted to the number of voters listed in the poll book, poll list or signature poll book records. If more votes in a precinct appear for a particular race or issue than the number of marked names in the poll book, poll list or signature poll book records (showing voters who voted, including absentee and provisional voters), such occurrence must be documented and reported to the Secretary of State immediately. Please note that each team must be comprised of election officials equally divided among the two major political parties. Any chain of custody logs for the ballots, poll worker reconciliation results, and board of elections reconciliation results should also be reviewed for each precinct being recounted. These records must be available for visual inspection by observers upon request. The observers and members of the public shall not be permitted to handle the records.

5. Ballots must be checked to verify that each candidate's race, or a question or issue has been properly identified. Observers and members of the public may observe the inspection of the ballots but may not handle ballots.

6. Regular absentee ballot envelopes returned to or received by the board of elections after the relevant statutory deadline for that type of ballot may be viewed by observers and members of the public, but they may not be handled by such an observer or citizen, and such ballots must remain sealed without viewing the actual ballot contained within the envelope.

7. Ballots and envelopes, whether they are outside envelopes on late returned ballots or ID envelopes for absentee or provisional ballots, must be handled only by the members of the board of elections, its director, deputy director, or other designated employees of the board.

8. The board must randomly select whole precincts whose vote totals for the race or issue to be recounted equal at least 5% of the total vote in the race to be recounted.

9. The ballots for these precincts must then be manually hand counted using the procedures set forth in Directive 2008-34 (Manual Hand Count Procedures).

10. For the purposes of this directive, "randomly select" means the following:

a. Whole precincts shall be selected for the recount.

NOTE: Each precinct's ballots shall include for the recount all relevant regular ballots (VVPAT and/or optical scan paper ballots), provisional ballots, and absentee ballots of all types (including provisional absentee ballots) tallied and recorded as part of the official certification. Sealed VVPAT canisters may be opened for the purposes of conducting the recount.

b. Enough precincts shall be selected for the recount whose total votes cast, when taken together, equal at least 5% of the total votes cast in the election at issue in the county. To calculate this percentage, multiply the number of total votes cast in the county by 0.05 and then round up to the next whole number if necessary.

c. Before the scheduled recount, each board shall create a printable list of precinct names/numbers for the election in question (whatever is used by that board to describe a precinct). The name of each precinct must be printed in a table that contains equally sized boxes that are at least 1 inch high and two inches long. During the scheduled recount, the board shall randomly select the precincts to be recounted according to the following steps in the presence of observers:

- Step 1: allow any interested observer or member of the public to review the list.
- Step 2: cut the pages into equally sized pieces so that the designated name of each precinct is on its own piece of paper.
- Step 3: turn the container upside down and allow any public observer to view the container to confirm it is empty before placing any and all pieces of paper in the container. Place the pieces of paper in a container large enough to hold all of them. A transparent material for the container is a good idea.
- Step 4: mix the pieces in the container thoroughly.
- Step 5: pick one precinct at a time without looking at the container.
- Step 6: one recount team member shall announce the precinct name/number and remaining team members shall confirm the name/number of the selection.
- Step 7: the teams shall allow any observer to view and confirm for members of the public the piece of paper selected.
- Step 8: continue selecting precinct names/numbers in accordance with these steps until the number of voters in the precincts selected equals at least the number that would comprise 5% of the total votes cast in the election in question.
- Step 9: set aside the container with the remaining pieces of paper with precinct names/numbers on them for any further draws, if necessary.

B. Optical Scan Voting 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. Verify ballots

- a. After the board has randomly selected one or more precincts, the sum of whose total votes cast equals at least 5% of the total votes cast for the candidate races, or question or issue elections being recounted, the board shall select the paper ballots to be compared with the electronic results for the precincts randomly selected for the recount.
- b. Ballots must be checked to verify that each candidate or issue has been properly identified.
- c. Ballots selected must be inspected for mutilations and other invalidities not accounted for by ballot remakes.

d. The ballot chain of custody forms for the ballots cast in all of the randomly selected precincts must be inspected to ensure proper completion. If the recount team determines that any of the ballot chain of custody forms were not properly completed, or that election officials failed to complete the ballot chain of custody forms, the precinct may not be recounted, and a replacement precinct must be selected. If extra precincts were chosen during the selection process, the first extra precinct should be used.

3. The recount

a. For each candidate race or question, or issue election to be recounted, a hand count of the votes cast on the optical scan paper ballots for each randomly selected precinct must be made by physical examination and hand count of the ballots (see Directive 2008-34). All types of ballots must be included in the hand count (regular, absentee of all types, and provisional, including remakes for any of these types of ballots).

b. Optical Scan counties using DRE voting machines in an election must also include a hand count of the VVPATs for DREs used in the election in question, as described in Section C of this directive, below, in the hand count of the precinct(s) randomly chosen for the initial 5%.

c. The hand count must then be compared to the recorded electronic summary or, in the case of “double bubble” votes (voter writing in the name of a candidate for whom the voter has already voted), combined electronic/hand counted summary of the votes as contained in the official certification of the votes for that race or issue in that precinct. A record of the comparison must be made for each precinct included in the recount. If there is no difference between a hand count and the recorded electronic ballot summary or combined electronic/hand counted summary of the votes contained in the official certification results for the precincts selected for the recount, or if the difference is two or less votes, then the board may complete the recount of the optical scan ballots by proceeding to count them in the same manner as in the official canvass.

d. If any comparison of the hand count and official certification results as noted above results in a difference between the hand count and the official certified ballot summary, it must be determined if a hand counting mistake occurred. If it is determined that no counting mistake has occurred, the hand count of the ballots shall be taken to be the accurate count, and the board shall provide written notification to the Secretary of State of any such discrepancy occurring between a hand count and the official certified summary for each affected precinct and for the total number of precincts included in the recount.

e. If for all precincts included in the recount the official certification results for each precinct, when taken together, do not match the related hand counts of ballots with a total difference of two or less votes, and after rechecking the hand counted results, the hand counted results and the official certification results are still not equal, or within two or less votes, the hand count shall be the official certified results for the race(s) or issue(s) being recounted in this first phase of the recount, and additional precincts for further verification and recounting must be selected if any uncounted precincts remain in the election being recounted.

f. The additional precincts selected, if any, must be precincts not previously included in the recount and equal the number of precincts whose vote totals for the race(s) or issue(s) being recounted equals at least 3% of the total votes cast for the election being recounted in the county.

g. The additional precincts must be randomly selected (following steps 4 through 8 described above in Section VI.A.10.c) in the same manner as those precincts selected for the original 5% of

the vote. These additional precincts' votes for the candidate(s) or issue(s) being recounted must be hand counted in accordance with Directive 2008-34 and as set forth in f) below.

h. The board must perform the recount steps a), b), c) and d) that are listed directly above with the additional 3% or more of the candidate(s) or issue(s) being recounted, with the exception that, if for all precincts included in the second phase of this recount, the official certification results for each precinct in the additional 3% or more of votes for the candidate(s) or issue(s) being recounted, when taken together, do not match the related hand counts of ballots with a total difference of two or less votes, and after rechecking the hand counted results, the hand counted results and official certified ballot summary are still not equal or within two or less votes, all votes for the race(s) and/or issue(s) on all ballots in the county being recounted must be hand counted, with the official certification amended to match the hand count for the entire county's ballots for the race(s) or issue(s) being recounted. In such case each team performing the hand counts must verify its results by performing two such hand counts that match in total for each precinct.

i. If a comparison of the results of the official certification count and the hand counted ballots in the second batch are equal, and the difference between the hand count and the official certification count in the first batch is no more than two votes, the remainder of the ballots may be run through the tabulator. (Hart eScan counties may use the totals from the official certification as the results for the votes cast for the candidate(s) or issue(s) recounted in the remaining 3% random sample of precincts). Then the board must add this to the hand count total of the 5% random sample of precincts.

j. In any case where the hand count of any random sample of precincts or the entire county's hand counted ballots differ from the official certified results of that group of precincts, the official certified results shall be amended consistent with the applicable hand counted results.

k. If the optical scan ballots used in the election being recounted have been run through the tabulator during the recount, then at the conclusion of the recount the program must be retested using the pre-marked test stack of ballots.

C. Direct Recording Electronic (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 for the ballots cast on a DRE voting machine.

1. Verify VVPAT

a. After the board has randomly selected one or more precincts, the sum of whose total votes cast equals at least 5% of the total votes cast for the candidate races, or question or issue elections being recounted, the board shall select the VVPATs to be compared with the electronic results for the precincts randomly selected for the recount.

b. VVPATs must be checked to verify that each candidate's race, question or issue has been properly identified.

c. Check the public counters to verify the numbers on those counters correspond to the numbers on the VVPAT and the poll book, poll list, or signature poll book records.

d. Inspect the VVPATs for mutilations and other invalidities. If any of the following are found, the randomly selected precinct may not be recounted and a replacement precinct must be selected:

- The canister was not sealed;
- The security seal number has been tampered with or does not match the serial number recorded on election night (unless the board of elections has records of needing to open and re-seal the VVPAT that show a matching seal number); or
- The zero report was not found or does not contain “0” voters for all candidates in the race being recounted.

If extra precincts were chosen during the initial selection process, the first extra precinct should be used.

2. Verify optical scan ballots

DRE counties must complete the steps in Sections VI.B.1., 2., and 3.a)-d) and k) of this directive, above, for the optical scan ballots used in the selected precincts and must include the results of the hand count of those optical scan ballots in the recount as discussed in Section 3., immediately below.

3. The recount

a. Perform a hand count of the VVPATs in the randomly selected precincts using the procedures in Directive 2008-34 (Manual Hand Count Procedures).

b. Perform a hand count of all other types of ballots included in the official certification, including regular optical scan ballots (absentee ballots of all types and provisional ballots, including remakes). Follow the procedures in Directive 2008-34 (Manual Hand Count Procedures) for the hand count of optical scan ballots.

c. Compare the totals from the hand counted VVPATs and optical scan ballots to the recorded electronic summary or, in the case of “double bubble” votes as is described in Directive 2008-106, combined electronic/hand counted summary as contained in the official certification results. A record of the comparison must be made for each precinct included in the recount. If there is no difference between a hand count and the recorded electronic ballot summary or combined electronic/hand counted summary of the votes contained in the official certification results for the precincts selected for the recount, or if the difference is two or less votes, then the board may complete the recount of the optical scan ballots by proceeding to count them in the same manner as in the official canvass.

d. If any comparison of the hand count and the official certification results in a difference between the hand count and the official certification results, it must be determined if a hand counting mistake occurred. If it is determined that no counting mistake occurred, the hand count of the ballots shall be taken to be the accurate count, and the board shall provide written notification to the Secretary of State of any such discrepancy occurring between a hand count and the official certified summary for each affected precinct and for the total number of precincts included in the recount.

e. If for all precincts included in the recount the official certification results for each precinct, when taken together, do not match the related hand counts of ballots with a total difference of two or less votes, and after rechecking the hand counted results, the hand counted results and official certification results are still not equal, or within two or less votes, the hand count shall be the official certified results for the race(s) or issue(s) being recounted in this first phase of the recount, and additional precincts must be selected.

f. The additional precincts must be precincts not previously included in the recount and equal the number of precincts whose vote totals for the race(s) or issues(s) being recounted equals at least 3% of the total votes cast for the election being recounted.

g. The additional precincts must be randomly selected (following steps 4 through 8 described above in Section VI.A.10.c) in the same manner as those precincts selected for the original 5% of the vote. These additional precincts' votes for the candidate(s) or issues(s) being recounted must be hand counted in accordance with Directive 2008-34 as set forth above.

h. The board must perform the recount steps a), b), c) and d) that are listed directly above with the additional 3% or more of the candidate(s) or issue(s) being recounted, with the exception that, if for all precincts included in the second phase of this recount, the official certification results for each precinct in the additional 3% or more of votes for the candidate(s) or issue(s) being recounted, when taken together, do not match the related hand counts of ballots with a total difference of two or less votes, and after rechecking the hand counted results, the hand counted results and official certification results are still not equal, or within two or less votes, all votes for the race(s) and/or issue(s) on all ballots in the county being recounted must be hand counted, with the official certification amended to match the hand count for the entire county's ballots for the race(s) or issue(s) being recounted. In such case each team performing the hand counts in county-wide hand count must verify its results by performing two such hand counts for each precinct that match in total.

i. If a comparison of the results of the official certification count and the hand counted ballots in the second batch are equal, and the difference between the hand count and the official certification count in the first batch is no more than two votes, then the board may complete the recount of the optical scan ballots by proceeding to count them in the same manner as in the official canvass. Otherwise, all ballots for candidate(s) or issue(s) to be recounted shall be hand counted.

j. In any case where the hand count of any random sample of precincts or the entire county's hand counted ballots differ from the official certified results of that group of precincts, the official certified results shall be amended consistent with the applicable hand counted results.

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 reflect the votes of the precincts, the ballots of which were recounted, as shown by such recount. The board shall, pursuant to R.C. 3505.33, 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, and shall retain the original certified amended abstracts.

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 the nominee 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 days after the date of such amended declaration of the results of such election, file an application accompanied by the appropriate deposit per precinct (see Section III, C) with the board of elections for a recount of the votes cast at such election in any precinct for which ballots were not 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 that has filed a statement with the board as provided in the third paragraph of R.C. 3515.03 may, within five days after the date of the amended declaration, file an application accompanied by the appropriate deposit per precinct (see Section III, C) with the board for a recount of the votes in any precinct for which ballots were not 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 by adopting those procedures the board deems necessary in public session. 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 county's assigned elections counsel.

Sincerely,

Jennifer Brunner