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DIRECTIVE 2012-11

February 17, 2012

To: All County Boards of Elections

Re: Recount Procedures

SUMMARY

This directive is reissued prior to each primary and general election to inform boards of elections of the circumstances and procedures for conducting a recount after the official results of an election have been certified. This directive addresses both automatic and requested recounts.

I. WHEN A RECOUNT MUST BE CONDUCTED

A. Automatic Recount (RC 3515.011)

An automatic recount must be conducted when the difference between votes cast for a declared winning nominee, candidate, question, or issue, and the declared losing nominee, candidate, question, or issue is equal to or less than a certain percentage of the total votes cast in the candidate contest, question, or issue as described below.

1. Board of elections declares automatic recounts in nominations or elections within a county

A board of elections must order the automatic recount for any county, municipal, township or school district race, or local question or issue election wholly contained within the county when the difference between votes cast for a declared winning nominee, candidate, question or issue, and a 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 in the candidate contest, question, or issue.

When a board of elections orders an automatic recount, that county board of elections must conduct a recount in its county for the election in question according to the procedures in this directive.

2. Secretary of State declares automatic recounts in multi-county district nominations or elections

The Secretary of State must order the automatic recount of any multi-county district race, question, or issue when the difference between votes cast for a declared winning nominee, candidate, question or issue, and a 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 in the candidate contest, question, or issue.

When the Secretary of State orders an automatic recount, each county board of elections involved must conduct a recount in its county for the election in question according to the procedures in this directive. Each board of elections involved shall report the results of its recount to the board of elections in the most populous county in the district, who will report to the Secretary of State's office.

3. Secretary of State declares automatic recounts in statewide candidate or issue nominations or elections

The Secretary of State must order the automatic recount of any statewide election when the difference between votes cast for the declared winning nominee, candidate, question, or issue does not exceed the number of votes cast for the declared defeated nominee, candidate, question, or issue by a margin of one-fourth of one percent (0.25%) or more of the total votes cast in the race or issue.

When the Secretary of State orders an automatic recount, each county board of elections must conduct a recount in its county for the election in question according to the procedures in this directive. Each board of elections shall report the results of its recount directly to the Secretary of State's office.

B. Requested Recount (RC 3515.01)

A requested recount may be conducted only when an automatic recount of a race or issue is not mandated by RC 3515.011. Any candidate who was not declared nominated or elected or 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 a recount of the votes cast in any precinct.

1. Requested recounts in nominations or elections within a county

Any defeated candidate or issue group may file a written application with the county board of elections for a recount of the votes cast in the race or issue in any precinct in which the race or issue appeared on the ballot. Promptly advise the regional liaison assigned to your county or the Director of Elections if any such recount is requested.

2. Requested recounts in multi-county district nominations or elections

Any defeated candidate or issue group may file a written application with the most populous county in the district for a recount of the votes cast in the race or issue in any precinct in any counties in which the race or issue appeared on the ballot. Promptly advise the regional liaison assigned to your county or the Director of Elections if any such recount is requested.

3. Requested recounts in statewide nominations or elections

Any defeated candidate or issue group may file a written application with the Secretary of State's office for a recount of the votes cast in the race or issue in any precinct in any county.

II. AUTOMATIC RECOUNT (RC 3515.011)

A. When One Candidate is to be Elected

Where there are two or more candidates for a single office but only one candidate is to be elected, 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 or nominated)
Candidate B	2,815 votes (declared defeated)
Candidate C	2,795 votes (defeated)

The total vote for the office is 8,455. One-half of 1% of 8,455 is 42.275 ($8,455 \times 0.005$). Do not round.

Candidate A defeated Candidate B by 30 votes, which is less than 42.275. Because the difference between the declared elected and the declared defeated candidates is less than one-half of 1% (30 is less than 42.275), an automatic recount is declared, and the votes cast for each of the three candidates in the contest are 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 is interpreted to mean the candidate whose election is disputed rather than to mean all of the candidates for the particular office.

Using the example below, if five candidates seek election, 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 seat in computing the margin for an automatic recount. For example:

Candidate 1	4,200 votes (elected or nominated)
Candidate 2	2,301 votes (elected or nominated)
Candidate 3	2,300 votes (declared elected or nominated)
Candidate 4	2,275 votes (declared defeated)
Candidate 5	2,250 votes (defeated)

Do not include the votes cast for Candidates 1 and 2 to compute the total vote for the third seat because their election is not in dispute.

The votes cast for Candidates 3, 4 and 5 total 6,825. One-half of 1% of 6,825 is 34.125 ($6,825 \times 0.005$). Do not round.

Candidate 3 defeated Candidate 4 by 25 votes, which is less than 34.125. Because the difference between the declared elected and the declared defeated candidates is less than one-half of 1% (25 is less than 34.125) an automatic recount is declared and the votes cast for each of the five candidates in the contest are recounted.

C. Tied Contest (Resolved by Lot at Official Canvass) Leads to Automatic Recounts

Any candidate contest that was tied according to the results of the official canvass should have been resolved by lot at the end of the board's official canvass. In the event that the board neglected to resolve a tie in a candidate race at the end of its official canvass as required by law, it must break the tie by lot according to the process outlined in Directive 2012-10 (Official Canvass) prior to performing the recount. However, please note that the board may only resolve a tie by lot during a public meeting with a majority of the board members present.

III. REQUESTED RECOUNT (RC 3515.01)

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

A recount of the election results certified by a board of elections may only be requested **within five days** after the board of elections or the Secretary of State declares the official results of the election.

If a contest (candidate, question, or issue) was wholly contained within a county, the application is filed with that county's board of elections.

If a contest (candidate, question, or issue) appeared on ballots in a multi-county district, the application is filed with the board of elections in the most populous county of the district.

If the contest (candidate, question, or issue) was statewide, the application is filed with the Secretary of State's office.

1. Candidate election

A candidate who was not declared nominated or elected in a race may make written application to the appropriate election officials for a recount of votes cast in that contest in some or all of the precincts where that contest 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 question or issue in all or some of the precincts where that question or issue was submitted to the voters. The group filing the application for recount must designate one of its members as chairperson to receive all notices concerning the recount.

B. Deposit (RC 3515.03)**1. Amount**

The applicant(s) must file with the application a deposit of \$55 per precinct to be recounted in cash, bank money order, bank cashier's check, or certified check.

2. Special depository fund

The board shall deposit all funds received from an applicant in a special depository fund with the county treasurer. It is advisable for this to be an active line item in every fiscal year budget to ensure the prompt deposit of funds. 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. Purpose

The deposit serves as security to cover the cost of the recount. If all requested precincts are not counted, any unused balance must be refunded to the applicant(s).

C. Assessing Recount Charges (RC 3515.07)**1. Calculating the charges**

The board of elections calculates the charges for the recount. It shall include all expenses the board incurs because of the application, other than the regular operating expenses the board would have incurred regardless of whether the application had been filed.

The total amount of charges so calculated and fixed, divided by the number of precincts listed in the application and for which votes were actually recounted, shall be the charge per precinct for the recount. The charges per precinct shall not be more than \$55, or 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 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 upon the completion of the recount of a candidate nomination or election or issue election in any precinct, if either of the following occurs:

- a. 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*

- b. The candidate applicant is declared nominated or elected, or the result of the issue election is declared to be opposite to the original declaration of result.

IV. PREPARING FOR THE RECOUNT

A. Scheduling a Recount and Providing Written Notice (RC 3515.03)

1. Scheduling

After the appropriate board of elections or the Secretary of State has ordered an automatic recount or an application requesting a recount has been filed, each board of elections participating in the recount shall promptly fix the time, method, and place at which the recount will occur.

The recount shall take place not later than **ten** days after the day such application is filed or such order is made. After each board schedules its recount, it must notify the most populous county, in the case of a multi-county district race or issue recount, or the Secretary of State's office, in the case of a statewide race or issue recount, of the date scheduled for its recount.

2. Notice

At least **five** days before the date of a scheduled recount, each board of elections must give written notice by certified mail of the time and place of the recount to the following persons:

- a. Each person for whom votes were cast in the election that is the subject of the recount.
- b. For question or issue elections, the chairperson of the group of electors that applied for the recount and/or the taxing authority or petitioners that submitted the question or issue to the board of elections.

3. Waiver of Notice

The requirement to mail notice may be waived if the board receives a waiver in writing from each person entitled to receive such notice. Please keep in mind that even if all persons entitled to receive written notice of a recount waive their right to that notice, the board still must schedule its recount no earlier than the fifth day after the board completes its official certification.

B. Observers (RC 3515.03)

1. Generally

During a recount, ballots may be handled only by boards of elections members, directors, deputy directors, or other designated employees of the boards.

2. Observers

Ohio law provides that duly appointed observers may be present for any recount.¹

- a. **For candidate recounts**, each candidate in the contest to be recounted may attend and observe the recount and may designate one other person, not necessarily an elector, to also observe the recount on his or her behalf. In the event that a county board of elections performs the recount at more than one station, the candidate may appoint a sufficient number of observers to have one at each station for the time during which that station is actively recounting ballots.
- b. **For question or issue recounts, any of the following may observe the recount:**
 - i. The designated chairperson of a committee organized in accordance with RC 3505.21 to support or oppose a ballot question or issue.
 - ii. Any legal counsel appointed by the group of voters who applied for the recount. In the event that a county board of elections performs the recount at more than one station, the chairperson may appoint a sufficient number of observers to have one at each station for the time during which that station is actively recounting ballots.

3. Observers' Appointment and Conduct

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. An observer may freely observe the recount, but shall not interfere with the recount or touch the ballots. Because such challenges are reserved for a Contest of Election, observers at a recount may not challenge the board's determination of whether or not a ballot or vote is counted during a recount.²

4. Representatives of the media are permitted to attend a recount.

V. STOPPING AN AUTOMATIC RECOUNT

A. Before a n Automatic Recount Starts (RC 3515.03)

At any time *after* an automatic recount is ordered, but *before* the recount commences, the declared defeated candidate or issue chairperson for a losing side may file a written request to stop the recount. If more than one declared defeated candidate is entitled to the recount, (see Section II above for defining candidates who are "declared defeated") each of the declared defeated candidates must file a written request to stop the recount. If each losing candidate entitled to the recount requests the recount be stopped, the board must grant the request.

¹ RC 3515.03

² OAG 1974-103

B. After an Automatic Recount Starts (RC 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 (i.e., the margin of victory for the declared elected candidate is unchanged or has increased), the recount must be stopped. If the board finds otherwise, the board must deny the request to stop the recount, and the recount must continue until all ballots from the precincts involved have been recounted.

VI. PROCEDURES FOR RECOUNT (RC 3515.04, 3506.18, 3501.05)

A. All Voting Systems

1. The recount must be conducted by teams of elections officials equally divided among the state's two major political parties.
2. A recount team of at least two election officials must compare the total number of votes cast in the candidate contests 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 contest 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.
3. 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.
4. Sealed ballot envelopes must remain sealed; the actual ballot contained within the envelope shall not be viewed.
5. Ballots must be checked to verify that each candidate's contest, question, or issue was properly displayed on the ballots.
6. The board will randomly select 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.
7. 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 (voter verified paper audit trail and/or optical scan paper ballots), provisional ballots, and absentee ballots of all types tallied and recorded as part of the official certification.

- 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. To calculate this percentage, multiply the number of total votes cast in the election at issue by 0.05 and then round up to the next whole number if necessary.
- c. The board shall employ a method that ensures that every precinct in the jurisdiction to be recounted has the same chance of being selected as any other precinct. Acceptable methods include casting multi-colored die with each different color representing a different numeral of the precinct number or drawing slips of paper from a container. If the latter is employed, the board must allow the slips of paper and the container to be inspected by observers prior to commingling them inside the container for purposes of the drawing.

Because an applicant requesting a recount must name each precinct to be recounted, the definition of “randomly select” only applies to requested recounts in situations where the total number of voters who voted on the race or issue to be recounted in the precincts named in the application exceeds 5% of the total vote cast in the election to be recounted.

Random selection of precincts to be counted may occur before the scheduled recount takes place. However, it must occur during an open meeting of the board of elections and the candidates or the issue chairperson must be notified of the time and place at least 24 hours in advance of the meeting so that they may observe the drawing of precincts.

Note: It is important that every county board of elections preparing for a recount take care that its preparations do not inadvertently become pre-counting, either in fact or in perception.

B. Optical Scan Voting Machines

1. Preparations – Optical Scan Ballots

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 procedures above for making such random selection). In the event that there are both voter verified paper audit trail and optical scan paper ballots for the same named precincts for the recount, only one selection process is necessary.
- b. Make available for inspection, upon request of observers, any and all documentation regarding the election.

2. Test the program

Test the voting system in the same manner in which the board performed its pre-election and pre-canvass public tests.³ (Be sure to reset vote totals to zero when test is complete so your recount totals are correct.)

3. Verify ballots

- a. 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's contest, question, or issue was properly displayed on the ballots.
- c. Ballots selected must be inspected for mutilations and other irregularities not accounted for by ballot remakes.

4. The recount

- a. For each candidate contest, 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 using the procedures in Directive 2008-34 (Manual Hand Count Procedures). 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).

Note: Except as may otherwise be unavoidable (such as a recount of single-precinct local liquor option), the bipartisan teams conducting the hand count should not have access to the previously certified official results of the candidate contest, question or issue election results for that precinct.

Note: State law defines a valid mark for optical scan ballots.⁴ In the event of a tie vote of the board, the matter is not submitted to the Secretary of State.⁵

- b. Optical Scan counties using DRE voting machines in an election must also include a hand count of the voter verified paper audit trail for DREs used in the election in question, as described later in this directive, in the hand count of the precinct(s) randomly chosen for the initial 5%.
- c. At the conclusion of the hand count, the ballots shall be run through the tabulator and the electronic results shall be compared with the tally from the hand count. **If the electronic results and the tally from the hand count are identical, then each ballot from each precinct on which the candidate contest, question or issue to be recounted appears shall be run through the tabulator again** using the

³ RC 3506.14

⁴ RC 3506.21

⁵ RC 3505.27

electronic voting system (optical scan and/or DRE). It is not sufficient to re-upload media from the official canvass. A recount must start anew, as if no ballots have been scanned or tabulated.

- d. If the electronic results and the tally from the hand count are not identical, then the board must ascertain whether the error is a result of the hand tally or the electronic tally. If, after three rounds of hand-tallying the ballots for each randomly selected precincts still do not match, all ballots on which the candidate contest, question or issue to be recounted appears shall be hand-tallied. If the contest is a local option election or another single precinct election, the hand tally shall suffice and an electronic retabulation is not necessary.
- e. In any case where the final electronic tabulation or hand tally of all ballots differs from the official certified results of that group of precincts, the official certified results shall be amended consistent with the applicable re-counted results, as discussed later in this directive.
- f. 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 re-tested using the pre-marked test deck.

C. Direct Recording Electronic (DRE) Voting Machines

1. Preparations – DRE Ballots

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 procedures above for making such random selection). In the event that there are both voter verified paper audit trail and optical scan paper ballots for the same named precincts for the recount, only one selection process is necessary.
- b. Make available for inspection, upon request of observers, any and all documentation regarding the election.

3. Test the program

Test the voting system in the same manner in which the board performed its pre-election and pre-canvass public tests.⁶ (Be sure to reset vote totals to zero when test is complete so your recount totals are correct.)

⁶ RC 3506.14

4. Verify Voter Verified Paper Audit Trail

- 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 contests, or question or issue elections being recounted, the board shall select the voter verified paper audit trail to be compared with the electronic results for the precincts randomly selected for the recount.

Note: The voter verified paper audit trail (voter verified paper audit trail) serves as the official ballot to be recounted for the ballots cast on a DRE voting machine.⁷ Sealed voter verified paper audit trail canisters may be opened for the purposes of conducting the recount.

- b. VVAPTs must be checked to verify that each candidate's contest, 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 voter verified paper audit trail and the poll book, poll list, or signature poll book records.
- d. Inspect the voter verified paper audit trail for mutilations and other irregularities.

4. Verify Optical Scan Ballots Cast by Absentee and Provisional Voters

DRE counties must complete the steps in the optical scan section of this directive (above) for the optical scan ballots cast in the precincts randomly selected for the recount and must include the results of the hand count of those optical scan ballots in the recount as discussed below.

5. The Recount

- a. Perform a hand count of the voter verified paper audit trail in the randomly selected precincts using the procedures in Directive 2008-34 (Manual Hand Count Procedures).

Note: Except as may otherwise be unavoidable (such as a recount of single-precinct local liquor option) the bipartisan teams conducting the hand count should not have access to the previously certified official results of the candidate contest, question or issue election results for that precinct.

- b. At the conclusion of the hand count of the voter verified paper audit trail, the removable media (smart cards, compact flash memory cards, etc.) from each DRE for which a voter verified paper audit trail was inspected must be uploaded to the central tabulation system and a report generated for only those precincts having been randomly selected for the recount. If the electronic results and the tally from

⁷ RC 3506.18

the hand count are identical, then all removable media (smart cards, compact flash memory cards, etc) from each DRE at any voting location in the county at which a voter was eligible to vote on the candidate, question or issue election to be recounted must be uploaded to the central tabulation system and a report generated.

- c. If the electronic results for one machine and the tally from the hand count of the voter verified paper audit trail from that same machine are not identical, then the board must ascertain whether the error is a result of the hand tally of the voter verified paper audit trail or the electronic tally. If, after three rounds of hand tallying, the voter verified paper audit trail for that DRE still does not match, the final hand tally of the voter verified paper audit trail for that DRE shall be the recounted tally for that candidate contest, question or issue.
- d. In any case where the final electronic tabulation or hand tally of all voter verified paper audit trail / DREs differs from the official certified results of that group of precincts, the official certified results shall be amended consistent with the applicable re-counted results, as discussed later in this directive.

VII. POST-RECOUNT CONSIDERATIONS

A. Regarding Ties

In the event that the result of the official canvass in any candidate contest was a tie, and the result of the recount in that same candidate race remains a tie, the candidate declared the winner as decided by lot at the end of the official canvass remains the declared winner after the recount. The board must not break the tie by lot again. The original result stands.

In the event that the result of the official canvass of any candidate contest or issue was not a tie, but the recount results in a tie, then the board will break the tie in the recount by lot according to the directions in Directive 2012-10 (Official Canvass).

B. Amended Abstract (RC 3515.05)

Upon completion of the recount or upon stopping the recount pursuant to a written request from the candidate(s) involved, the board of elections promptly shall prepare and certify an amended abstract showing the votes cast in each precinct in which the race or issue appeared on the ballot, and the amended abstract shall reflect the recounted votes of the precincts involved in the recount. The board shall mail copies of the certified amended abstracts to such other boards of election or the Secretary of State's office as it was required to do in the case of the original abstract 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 it made its original declaration of the result of such election.

C. Remedies by Candidates or Issue Groups Affected by Requested Partial Recounts (RC 3515.06)

If, following a requested recount only, the amended declaration of the results of the election shows the result to be contrary to the originally declared result, a person who was originally declared nominated or elected or any group of five voters that filed a statement with the board⁸ may, within **five days** after the date of the amended declaration of the result, file an application with the board of elections or the Secretary of State's office accompanied by the appropriate deposit per precinct for a recount of the votes cast at such election in any precinct for which ballots have not already been recounted. Any such recount shall be conducted in the manner provided herein.

VIII. CONCLUSION

The procedures described in this directive are the baseline requirements for conducting a recount. If a majority of the members of a board of elections believes the results warrant further investigation at any time during the conduct of the recount, it may institute more rigorous procedures. If the board adopts procedures that differ from those ordered in this directive, it shall adopt those procedures in public session, document the procedures, and retain that documentation with the ballots and other information relating to the recount. Any additional procedures adopted by the board must build upon the baseline requirements in state law or established by this directive and may not weaken any of these requirements.

If you have any questions, please feel free to contact the Secretary of State's elections counsel assigned to your county.

Sincerely,



Jon Husted

⁸ 3515.03