

**Substantial rewording of Rule 1S-2.031 follows. See Florida Administrative Code for present text.**

**1S-2.031 Recount Procedures.**

(1) General application and procedures. This rule applies to machine and manual recounts involving federal, statewide, multi-county and county races. This rule also applies to recounts involving municipal races when the municipal election is conducted using county voting systems. The following procedures apply to recounts:

(a)1. If the Secretary of State orders a machine recount, the Division of Elections shall notify all the candidates or committees in the affected race or races that a machine recount will be conducted.

2. If a county or local canvassing board orders a machine recount, the board shall notify the candidates or committees in the affected race or races that a machine recount will be conducted.

(b) A recount shall not begin until after the recount is ordered.

(c) All procedures relating to recounts shall be open to the public.

(d) The canvassing board shall publish advance public notice of a machine or manual recount. The notice may be published before or immediately after a recount is ordered. The notice shall be posted directly on the homepage of the county supervisor of elections' website or through a link to the notice on the homepage. The notice shall also be published in a newspaper of general circulation in the county or displayed in at least four conspicuous locations in the county including on the door of the public entrance to the building where the office of the supervisor of elections is housed. If displayed, the notice must be accessible to the public 24 hours a day. If the recount involves only a municipal election, the notice shall be posted also on the municipal clerk's homepage and in at least four conspicuous locations in the municipality (in lieu of the county) including the public entrance to the building where the city clerk's office is housed. Additionally, the canvassing board shall contact media outlets in the community so as to broaden public awareness of the recount.

(e) Except as otherwise stated in this rule, at least one member of the canvassing board shall be present during all times a recount is being conducted.

(f) Any duplicated ballot prepared pursuant to Sections 101.5614(5) and 102.141(7), F.S., shall be compared with the original ballot to ensure the correctness of the duplicated ballot prior to tabulation for a machine or manual recount.

(g) Each time the election parameters are changed during a recount, the tabulating equipment must be retested pursuant to Section 101.5612, F.S. The existing test deck may be used if the race that is the subject of the recount appears on all ballot styles. Otherwise, a new test deck must be created.

(h) The Supervisor of Elections shall ensure the security of the ballots at all times of a recount including recess and adjournment of the canvassing board.

(i) All machine and manual recounts conducted pursuant to this rule must be completed in such a manner as to provide the canvassing board sufficient time to comply with the provisions of Section 102.112, F.S.

(i) As used in this rule, the term:

1. "Ballot text image" means an electronic text record of the content of a ballot cast by a voter and recorded by the voting device.

2. "Ballot text image report" means the printout of ballot text images for each machine or precinct generated pursuant to paragraph (3)(i) of this rule.

3. "Canvassing board" as used herein refers to the county canvassing board or the local board responsible for certifying the election results for that race, whichever is applicable.

4. "Outstack" refers to the act of setting aside in stacks ballots that may be accomplished as part of a high-speed tabulator or manually performed.

5. "Overvote" means that the elector marks or designates more names than there are persons to be elected to an office or designates more than one answer to a ballot issue and the tabulator records no vote for the office or question.

6. "Race" means any contest for office (including judicial retention), issue or other public measure.

7. "Representative" refers to a person designated pursuant to paragraph (3)(b) of this rule.

8. "Undervote" means that the elector does not properly designate any choice for an office or ballot question, and the tabulator records no vote for the office or issue or that the elector designated less than the number of choices allowed for the office or issue.

(j) After the completion of the recount, the results from the recount shall be used to certify the official results.

(2) Machine Recounts. In addition to the requirements in subsection (1), the following procedures specially apply in machine recounts:

(a)1. If the Secretary of State orders a machine recount, the Division of Elections shall notify all the candidates or committees in the affected race or races that a machine recount will be conducted.

2. If a county or local canvassing board orders a machine recount, the board shall notify the candidates or committees in the affected race or races that a machine recount will be conducted.

(b) Specific procedures for optical scan ballot machine recounts.

1. The tabulating equipment being used in the recount must be tested pursuant to the provisions of Section 101.5612, F.S. The canvassing board may, but is not required to, use the same tabulating equipment on which ballots were originally tabulated. If the test shows no error, the canvassing board shall proceed with the machine recount. If the test indicates an error, the canvassing board shall first correct the error, retest the equipment pursuant to Section 101.5612, and then proceed with the machine recount.

2. When one or more races are being recounted and the voting system can outstack the overvotes and undervotes in more than one race at the same time:

a. The supervisor of elections shall change the election parameters so that all the ballots for the recounted race or races can be tabulated and all the ballots containing overvotes and undervotes in the recounted race or races can be outstacked from the other ballots during the machine recount.

b. The canvassing board or its staff shall then put each ballot through the tabulating equipment and determine the votes in the recounted race or races. For purposes of tabulating, the ballot is the page on which the race or races to be recounted appears. During this process, the ballot pages with the overvotes and undervotes in the recounted race or races must be outstacked into one stack.

c. The outstacked ballots shall be placed in a sealed container or containers until it is determined whether a manual recount will need to be conducted. Seal numbers shall be recorded at the time the ballots are placed in the containers.

3. When more than one race is being recounted and the voting system cannot outstack overvotes and undervotes in more than one race at a time:

a. The canvassing board or its staff shall put each ballot through the tabulating equipment and determine the votes in the affected races.

b. The canvassing board shall produce vote counts for those races involved in the machine recount.

4. In the event a manual recount is triggered pursuant to Section 102.166, the supervisor of election shall follow the procedures in section (3).

(c) Specific procedures for touchscreen ballot machine recounts.

1. The canvassing board or its staff shall recollect directly the votes from each of the machines where the affected race or races for each precinct and early voting site appeared on the ballot.

2. The total number of the votes from the touchscreen ballots shall then be added to the total number of the votes from the optical scan ballots. That total shall then be compared to the total number of voters who signed in to vote at each precinct and early voting site. If an error is detected, the cause therefore shall be ascertained and corrected. The corrected vote totals shall then be used as set forth in subparagraph 3.

3. The canvassing board shall verify that the total votes for the recounted race or races taken from the vote totals for each precinct and early voting site are the same as the total votes shown on the county totals from the first unofficial results. If there is a discrepancy, the canvassing board shall investigate and resolve the discrepancy.

(d) In the event the percentage threshold for a manual recount in Section 102.166, F.S. is met, the canvassing board shall determine the number of overvotes and undervotes. If a recount for a race is triggered and the race is a statewide or multicounty race, each canvassing board shall notify the Secretary of State of the number of overvotes and undervotes in the county for the affected race. The procedure in section (3) shall then be followed.

(3) Manual Recount. If a manual recount is ordered, only the overvotes and undervotes are reviewed. In addition to the requirements in section (1), the following general procedures apply to any manual recount involving optical scan ballots and touch screen ballots:

(a) Notice.

1. If the Secretary of State orders a manual recount, the Division of Elections shall be the entity to notify the following persons and if it is the county or local canvassing board that orders the manual recount, then the supervisor of elections' office shall notify these persons:

a. The candidates in the race that is the subject of the manual recount.

b. The respective chairperson of the state executive committee of a political party if the party has a candidate who is entitled to one or more representatives pursuant to paragraph (b)1.

c. The respective chairperson of the political committee in support of or in opposition to the ballot issue or judicial retention issue that is the subject of a manual recount.

2. The candidate or chairperson notified by the Division will have to contact the supervisor of elections in each county involved in the manual recount to find out the time and location of the recount in that county. If the candidate or chairperson was notified by the canvassing board about a recount, then the supervisor of elections must contact the candidate or chairperson, tell him or her the date, time and location of the recount, and whether he or she is entitled to one or more representatives at the recount pursuant to subparagraph (3)(b).

(b) Representatives. The following persons or entities are entitled to representatives as specified, and at such time as they are informed by the Supervisor of Elections of the number of representatives they may designate, they must subsequently provide the names of their designated representatives to the Supervisors of Election or the municipal clerk, whichever is applicable:

1. In a race for office including judicial retention, each candidate whose ultimate success or failure in the race could be adversely or favorably impacted by the manual recount-is entitled to one representative per counting team plus one additional representative for the county canvassing board.

2. In a partisan race that is the subject of a manual recount, each political party with a candidate who is entitled to a representative under subparagraph (3)(b) is entitled to one representative.

3. In a race involving a ballot issue or judicial retention race that is the subject of a manual recount, any political committee who registered before an election in specific support of or opposition to a ballot issue or a judicial retention race is entitled to one representative. If more than one registered committee supports or opposes an issue, only one representative per counting team plus one to cover the canvassing board is allowed for each side, regardless of the number of committees in support of or in opposition to a ballot issue. The canvassing board shall notify each committee chairman of the number of representatives it is entitled to have present at the recount. The number of representatives shall be equal to the total number of representatives allowed divided by the number of registered committees on each side of the issue.

(c) Location. The manual recount shall be conducted in a room large enough to accommodate the necessary number of counting teams, the canvassing board members and representatives of each candidate, political party or political committee entitled to have representatives. Members of the public, including the media, shall be allowed to observe the recount from a separate area designated by the canvassing board. The area may be outside of the actual recount area but must still allow the observers to view the activities.

(d) Public order. Representatives and observers must not interfere with or disturb the recount in any way except as provided in subparagraph (3)(h)4.c. The canvassing board may by majority vote have any person or persons removed from the premises by a law enforcement officer charged with maintaining order at the recount if such person or persons interfere or disturb the recount process and the situation cannot be corrected.

(e) Review of statutes and rules. The canvassing board, the members of the counting teams, and the representatives entitled to be present shall jointly review the rules and statutes governing recount procedures and what constitutes a clear indication that the voter has made a definite choice.

(f) Recording. The activities of the canvassing board in making determinations of ballots to be counted shall be recorded by either audio or audio/video tape. In addition, the minutes of the manual recount shall be made and approved by the canvassing board. All tapes and minutes are public record. At a minimum, the tapes should be made available to the public no later than 1 week after the canvassing board certifies the election results.

(g) Post-recount. The canvassing board shall re-examine the outstacked ballots for which a determination of a voter's choice could not be made. Based on that re-examination, the board shall notify the Division of Elections to determine if the standards for determining a voter's choice as set forth in law or adopted by rule as mandated in sections 102.166(4), and 101.6952(2), F.S., should be revised to better determine the voter's choice on those outstacked ballots.

(h) Specific procedures for optical scan ballot manual recounts.

1. Ballots with overvotes and undervotes shall be transported to the location of the manual recount by two members of the canvassing board and a sworn law enforcement officer.

2. At the beginning of the manual recount, the seal numbers on the containers shall be announced as they are broken and compared to the numbers previously recorded.

3. Each counting team shall review the ballots before them to determine if there is a clear indication that the voter has made a definite choice, according to standards set forth in law or adopted by rule as mandated in sections 102.166(4), and 101.6952(2), F.S.

4. Each counting team shall sort the ballots into the following stacks:

a. Votes for which the team determines the voter made a definite choice for each candidate or issue choice;

b. Ballots which the counting team determines there is no clear indication that the voter made a definite choice for an office or ballot question; and

c. Ballots to be set aside for the canvassing board's determination because the team is unable to make such determination or a representative objects to the team's determination. Each ballot set aside because the team is unable to determine that there is a clear indication that the voter has made a definite choice must be placed in a separate envelope. The envelope must include the precinct number, why the team is unable to make the determination, and the names of the counting team's members. If a ballot is set aside because a representative objected to the counting team's decision, the envelope must include the precinct number, the names of the counting team's members, the counting team's initial determination, the reasoning behind the challenge and the name and representative capacity of the person bringing the challenge.

5. The counting team shall then count and record the total for each stack in subparagraph 4.

6. The canvassing board shall review each ballot set aside by a counting team and shall determine if there is a clear indication that the voter has made a definite choice, according to standards set forth in law or adopted by rule as mandated in sections 102.166(4), and 101.6952(2), F.S. All three members of the canvassing board must be present for this determination and the determination must be by majority vote.

7. The records of the manual recount shall detail the number of votes each candidate or issue choice received and the number of ballots not allocated to any candidate or issue choice.

8. If ballots were sorted for more than one race during the machine recount, the following additional procedures shall be used:

a. The election parameters shall be changed so that only the overvoted and the undervoted ballots for one recounted race will be sorted.

b. All ballots previously sorted pursuant to subparagraph (2)(b)2. shall be put back through the tabulating equipment to sort the ballots for the first manually recounted race.

c. If there is another race to be manually recounted, following the first manual recount, the sorted ballots from the first manually recounted race will be combined with the other sorted ballots.

d. The election parameters shall be changed to sort the overvoted and the undervoted ballots for the next manually recounted race.

e. All previously sorted ballots shall be put back through the tabulating equipment to sort the ballots for the next manually recounted race.

f. The canvassing board shall make an identifying mark or notation on each sorted ballot, in an area that does not interfere with the counting of the ballot, to indicate that the ballot was a manually recounted ballot for a particular race.

9. If ballots were not sorted for more than one race during the machine recount, the following procedures shall be used:

a. The election parameters shall be changed so that overvotes and undervotes in the first manually recounted race are identified and sorted for manual review. The tabulating equipment should be retested pursuant to Section 101.5612, F.S.

b. If there is another race to be recounted following the first manual recount, the sorted ballots from the first manual recount must be placed back in with the other ballots. The election parameters shall be changed to identify and sort ballots for the next manually recounted race.

c. The canvassing board shall make an identifying mark or notation on each sorted ballot, in an area that does not interfere with the counting of the ballot, to indicate that the ballot was a manually recounted ballot for a particular race.

(i) Specific procedures for touchscreen ballot manual recounts.

1. All three (3) members of the canvassing board must be present for any determination or decision to resolve a discrepancy that needs to be made pursuant to this paragraph. The determination or decision must be by majority vote.

2. The canvassing board shall apply the following standards to determine whether there is a clear indication on the ballot text image report that the voter has made a definite choice to overvote or undervote:

a. A definite choice not to cast an overvote is clearly indicated either by the presence on the ballot text image of a selection in the race or issue, or of an indication of an undervote in the manner prescribed by subparagraph b. Since touchscreen voting systems do not permit a voter to cast an overvote, the canvassing board shall accept the machine recount as conclusive that no overvotes were cast in the manually recounted race.

b. A definite choice to undervote is clearly indicated by reference to the manufacturer's specifications for what constitutes a clear indication of an undervote on its certified voting system. The following represents the manufacturer indicated markings of an undervote for each respective certified voting system:

(I) iVotronic DRE touchscreen's ballot image is a clear indication of each voter's textual selections as indicated

by its RECORD OF VOTE. The record of vote is a candidate code along with its content in each contest within the voter's ballot style. The content is either the candidate's name, a question's YES or NO response, a WRITE-IN where applicable, or an UNDERVOTE. At the end of each DRE's ballot image is a list of precinct totals by candidate code and the total voter ballot images.

(II) AVC EDGE DRE touchscreen's ballot image is a clear indication that the voter made a definite choice to undervote by the absence on the ballot image of any numeric codes designated for the candidates or choices for the affected race or issue, or by the presence on the ballot image of less than the maximum number of numeric codes that may be present for any affected race in which the voter is permitted to select more than one candidate.

(III) AccuVote TSx DRE touchscreen's ballot image is a representative ballot with a clear indication that the voter made a definite choice to undervote by the absence of an "X" within the brackets ([ ]) located next to the candidates or choices for the affected race or issue, or by the presence on the ballot image of Xs within the brackets located next to the candidates for the affected race which total a number less than the number of candidates for which the voter is permitted to cast a vote.

c. If a voter marks fewer candidates than there are positions to be elected for those offices, the votes for all of those marked candidates shall count. For example, if the voter is allowed to vote for 5 candidates in a special district election ("Vote for no more than 5") and the voter marks 2 candidates, the votes for those two marked candidates shall count.

3. The following specific procedures apply to the manual recount of undervotes:

a. The canvassing board shall order the printing of one official copy of the ballot text image report from each touchscreen voting machine that has recorded undervotes for the affected race. If the certified system does not permit the printing of a ballot text image report by touchscreen voting machine, then the canvassing board shall order the printing of the ballot text image report for each precinct and early voting site that has recorded undervotes for the affected race. If the certified voting system is capable of electronically sorting and identifying undervotes, the canvassing board must order the printing of the ballot text image report using such capabilities. The county supervisor of elections shall maintain a custody log for each ballot text image report and otherwise assure that the ballot text image report remains secure and free of tampering at all times.

b. The counting teams for the race being recounted shall examine the ballot text image report to identify and highlight ballot text images containing undervotes for the affected race and to determine if there is a clear indication

on the ballot text image containing the undervote that the voter made a definite choice. A certified voting system that includes a means for electronically sorting and identifying undervotes must be used to identify and highlight ballot text images with undervotes in place of the counting team process.

c. If a representative (designated pursuant to paragraph (b) of this subsection) objects to a counting team's decision, the names of the counting team's members, the counting team's initial determination, the basis for the objection, and the name and representative capacity of the person making the objection shall be attached to the ballot text image report. An objection must be based solely on departures from the procedures outlined in this rule for determining the clear indication on the ballot that the voter has made a definite choice to undervote.

d. The canvassing board must resolve all objections pursuant to this subsection. If the canvassing board determines that the counting team departed from the procedures outlined in this rule for determining the clear indication on the ballot that the voter has made a definite choice to undervote, then the canvassing board shall correct such departure by applying the applicable standard.

e. The counting teams shall maintain a running tally of the number of undervotes totaled per touchscreen voting machine in each precinct. After a review of ballot text image reports containing undervotes from the voting machine or the precinct, the counting team shall tabulate the total number of undervotes for such precinct. The counting teams shall compare the total number of undervotes manually recounted for each precinct to the total number of undervotes reported by the voting system in the complete canvass report for each precinct.

f. If the comparison of the undervotes in the manual recount matches the total number of undervotes reported for such precinct in the complete canvass report, then the counting team shall certify the results of the manual recount to the canvassing board. If there is a discrepancy between the number of undervotes in the manual recount and the machine recount, then the counting teams shall total the number of undervotes for such precinct up to two additional times to resolve such discrepancy. If, after re-tabulating the number of undervotes for each such precinct, the discrepancy remains, then the canvassing board shall investigate and resolve the discrepancy with respect only to such precinct. In resolving the discrepancy, the canvassing board shall review the records produced by the voting system and may request the verification of the tabulation software as provided in Section 102.141(5)(b), F.S., and conduct any necessary diagnostic examinations. However the canvassing board shall not order or conduct any diagnostic examination that may result in the clearing of any vote total or in any way affecting the memory of the machine.

g. The canvassing board shall then certify the number of votes for each candidate or issue choice by combining the totals on the machine during the sorting process with the totals of the manual recount.

(5) After the completion of a recount, the results from the recount shall be used to certify the official results.

*Rulemaking Specific Authority 20.10(3), 97.012(1), 102.141, 102.166(5) FS. Law Implemented 102.141, 102.166 FS.*

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