

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

1S-2.031 Recount Procedures.

(1) Definitions. As used in this rule, the term:

(a) “Ballot text image” means an electronic text record of the content of a touchscreen ballot cast by a voter and recorded by the voting device.

(b) “Ballot text image report” means the printout of touchscreen ballot text images for each machine or precinct generated pursuant to paragraph (5)(e) of this rule.

(c) “Canvassing board” means the county canvassing board or the local board responsible for certifying the election results for the race undergoing a recount.

(d) “Hybrid voting system” means an electronic or electromechanical device by which a voter with disabilities interacts with an electronic visual display to produce a paper output that contains the contest titles and the voter’s selections, and may also contain, but not be limited to, a barcode or other machine-readable optical label containing the voter’s selections. A hybrid voting system may be designed to read the vote targets or selections or the machine-readable optical label on the paper output.

(e) “Outstack” refers to the act of segregating, sorting or setting aside ballots either manually, digitally, or by a high-speed tabulator.

(f) “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 question and the tabulator records no vote for the office or question.

(g) “Overvote ballot” means a ballot with a recount race that has an overvote.

(h) “Race” means any contest for office (including judicial retention), ballot question, or other public measure.

(i) “Representative” refers to a person designated pursuant to paragraph (3)(b) of this rule.

(j) “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 question or that the elector designated less than the number of choices allowed for the office and the tabulator records those choices. This definition may be altered based upon the individual characteristics of each voting system and how the system accounts for blank ballots.

(k) “Undervote ballot” means a ballot with a recount race that has one or more undervotes.

(2) General applicability. This rule applies to recounts involving federal, statewide, multi-county, county, and municipal elections conducted using any county voting system. The following procedures apply to both machine and manual recounts:

(a) Presence of canvassing board. All three members of the canvassing board shall be present for the determination or decision to resolve a discrepancy during a recount; otherwise, at least two members of the canvassing board shall be present during all times a recount is being conducted. Any canvassing board determination or decision must be by majority vote.

(b) Security of ballots. 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.

(c) Timeliness. All 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. After the completion of a recount, the results from the machine recount and manual recount shall be used to certify the second set of unofficial returns and official returns, respectively.

(d) Testing of tabulating equipment. The tabulating equipment being used in the recount must be tested pursuant to the provisions of Section 101.5612, F.S., and each time the election parameters are changed during a recount. The same test deck used for the election may be used for the recount. 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 recount. If the test indicates an error, the canvassing board shall first correct the error, retest the equipment pursuant to Section 101.5612, F.S., and then proceed with the recount.

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

(f) Location. Recounts shall be conducted in a room large enough to accommodate, as applicable, 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.

(g) Recording and minutes. 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 a manual recount shall be made and approved by the canvassing board. All tapes and minutes are public record.

(3) Recount initiation, notice and representatives. The following procedures apply to both machine and manual recounts:

(a) Initiation of recount. A recount shall not begin until after the recount is ordered and notice has been provided as set forth in this section.

(b) Ordering of recount.

1. If the Secretary of State orders a machine or manual recount, the Division of Elections shall notify:

a. Each supervisor of elections within the county where the recount will occur.

b. The candidates in the race that is the subject of the recount.

c. 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 (3)(d)2.

d. 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 the recount.

e. The candidate or chairperson that they will have to contact the supervisor of elections in each county involved in the recount to find out the date, time, and location of the recount in that county.

2. If the canvassing board orders a machine or manual recount, the supervisor of elections or responsible officer of the municipality, as applicable, shall notify:

a. Each municipality whose race is the subject of the recount.

b. The candidates in the race that is the subject of the recount.

c. The respective chairperson of the county executive committee of a political party if the party has a candidate who is entitled to one or more representatives pursuant to paragraph (3)(d)2.

d. 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 the recount.

e. The candidate or chairperson of 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 paragraph (3)(d).

(c) Notice of recount.

1. The canvassing board shall publish advance public notice of any recount immediately after the recount is ordered or the notice may be published before a recount is ordered as a conditional notice that, if a recount is ordered, the recount will occur on a certain date, time, and location.

2. 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 supervisor's homepage.

3. 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. Any displayed notice must be accessible to the public 24 hours a day.

4. If the recount involves only a municipal election, the notice also shall be posted on the municipal clerk's website or through a link to the notice on the clerk's homepage, at the public entrance to the building where the city clerk's office is located, and in at least three other conspicuous locations in the municipality such as at a community center, public library, city park, and city hall

(d) Permissible representatives. The following persons or entities are entitled to have representatives present during a recount:

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 recount is entitled to have:

a. One representative for the county canvassing board.

b. One additional representative per counting team during a manual recount.

2. In a partisan race that is the subject of a recount, each political party with a candidate whose ultimate success or failure in the race could be adversely or favorably impacted by the recount is entitled to have:

a. One representative for the canvassing board.

b. One additional representative per counting team during a manual recount.

3. In a recount race involving a ballot issue or judicial retention race, any political committee who registered before an election in specific support of or opposition to the ballot issue or a judicial retention race is entitled to have:

1. One representative for the county canvassing board.

2. One additional representative per counting team during a manual recount; however, if more than one registered committee supports or opposes an issue, only one representative per counting team is allowed for each side of a ballot issue, regardless of the number of committees in support of or in opposition to the ballot issue.

(e) Names of representatives to be provided. The persons or entities entitled to have representatives present during a recount must provide the names of their designated representatives in writing as soon as is practicable under the circumstances to the Supervisors of Election or the municipal clerk, whichever is applicable, before the recount begins. Failure to provide the names of their representatives shall negate the opportunity of the persons or entity to have the representative present during the recount, except on the same conditions as a member of the public.

(f) Review of law and procedures. 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. Before a manual recount begins, the review shall also include the rules and statutes as to what constitutes a clear indication that the voter has made a definite choice.

(g) Public order. Representatives and observers must not interfere with or disturb the recount in any way, except a representative may object to a counting team's decision during a manual recount as provided in this rule. 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.

(4) Machine Recounts.

(a) Initial requirements. Each canvassing board responsible for conducting a recount shall put each optical scan ballot through automatic tabulating equipment and determine whether the returns correctly reflect the votes cast. If any optical scan ballot has become physically damaged so that it cannot be properly counted in the recount by the automatic tabulating equipment, a true duplicate of the damaged ballot shall be made pursuant to Sections 101.5614(5) and 102.141(7), F.S. The following procedures shall apply to machine recounts:

(b) Optical scan ballots when only one race is being machine recounted.

1. The supervisor of elections shall change the election parameters so that all the ballots for the recounted race can be tabulated and all the ballots containing overvotes and undervotes in the recounted race can be outstacked from the other ballots. If a race involves a contest where a voter may properly vote for more than one candidate, the

overvotes and undervotes must be manually counted if the voting system's election results report does not permit a determination of the number of overvotes and undervotes.

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

3. 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.

4. If the percentage threshold for a manual recount in Section 102.166, F.S. is met, the canvassing board shall determine the total combined number of overvote and undervote ballots. If the race is a statewide or multicounty race, each canvassing board shall notify the Secretary of State of the total combined number of overvote and undervote ballots in the county for the affected race.

(c) Optical scan ballots for recount when more than one race is to be recounted and the voting system can outstack the overvotes and undervotes in more than one race at the same time.

1. 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. If a race involves a contest where a voter may properly vote for more than one candidate, the overvotes and undervotes must be manually counted if the voting system's election results report does not permit a determination of the number of overvotes and undervotes.

2. The canvassing board or its representatives 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 should be outstacked.

3. 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.

4. If the percentage threshold for a manual recount in Section 102.166, F.S. is met, the canvassing board shall determine the total combined number of overvote and undervote ballots. If the race is a statewide or multicounty race, each canvassing board shall notify the Secretary of State of the total combined number of overvote and undervote ballots in the county for the affected race.

(d) Optical scan ballot 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.

1. The supervisor of elections shall change the election parameters so that all the ballots for the recounted races can be tabulated.

2. The canvassing board or its representatives shall put each ballot through the tabulating equipment and determine the votes in the affected races. For purposes of tabulating, the ballot is the page on which the races to be recounted appears. During this process, the ballot pages with the overvotes and undervotes in the recounted races shall be reported.

3. The canvassing board shall determine the total combined number of overvote and undervote ballots for each race. If 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.

(e) Touchscreen ballot machine recounts.

1. The supervisor of elections shall provide the canvassing board the votes directly from each of the machines where the affected race or races for each precinct and early voting site appeared on the ballot. The supervisor may obtain the votes from the machines before the convening of the canvassing board for the recount, but the reporting of the results shall be done at a canvassing board meeting.

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.

3. 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 4, below.

4. 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.

(f) Machine recount of hybrid voting system's paper outputs. The procedures for a machine recount of the paper output from a hybrid voting system are identical to those as specified in subparagraphs (b), (c), and (d), above, as applicable. If the hybrid voting system's paper output is identical to the optical scan ballot mentioned in this paragraph, the paper output may be treated as an optical scan ballot for the recount.

(5) Manual Recount. In addition to the requirements in subsections (2) and (3), the following procedures apply to a manual recount:

(a) Review of ballots. Only the overvotes and undervotes from the machine recount shall be reviewed.

(b) Outstacking of overvotes and undervotes.

1. If the ballots were outstacked for either only one recounted race or for more than one recounted race during the machine recount, all 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. If the ballots were not outstacked for more than one recounted race during the machine recount, all ballots shall be transported to the location of the manual recount by two members of the canvassing board and a sworn law enforcement officer.

(c) Optical scan ballot manual recount when the ballots were outstacked only for one race during the machine recount.

1. The seal numbers on the containers shall be announced as they are broken and compared to the numbers previously recorded.

2. 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.

3. 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 a stack of ballots that have allowable choices in that race;

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 one or more envelopes designated for undetermined ballots or ballots for which there is an objection. The designated envelope may each contain one or more ballots at the canvassing board's discretion; however, the envelope or a separate paper contained in the envelope for each ballot therein 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 or the separate paper contained in the envelope for each ballot therein 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.

4. The counting team shall then count and record the votes from each candidate or issue stack or from the one stack that have allowable candidate choices in that race in subparagraph 3.

5. 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.

6. 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.

7. 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.

(d) Optical scan ballot manual recount for when the ballots for more than one race during the machine recount.

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

2. All ballots previously outstacked pursuant to subparagraph (4)(c), the seal numbers on the containers shall be announced as they are broken and compared to the numbers previously recorded.
3. The tabulating equipment being used for the recount shall be tested as stated in paragraph (2)(d).
4. All ballots previously outstacked pursuant to subparagraph (4)(c) or not outstacked pursuant to subparagraph (4)(d) shall be put back through the tabulating equipment to outstack the ballots for the first manually recounted race.
5. 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.
6. 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 or a stack of ballots that have allowable choices in that race;
 - 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 one or more envelopes designated for undetermined ballots or ballots for which there is an objection. The designated envelope may each contain one or more ballots at the canvassing board's discretion; however, the envelope or a separate paper contained in the envelope for each ballot therein 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 or the separate paper contained in the envelope for each ballot therein 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.

7. The counting team shall then count and record the votes from each candidate or issue stack or from the one stack that have allowable candidate choices in that race in subparagraph 4.

8. 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.

9. 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.

10. If there is another race to be manually recounted, following the first manual recount:

a. The canvassing board or its representatives shall stamp or make an identifying mark or color next to the ballot title (in an area that will not interfere with the counting of the ballot) on each sorted ballot from the first manual recount to indicate that the ballot was manually recounted for a particular race.

b. The outstacked ballots from the first manually recounted race will be combined with the other outstacked ballots.

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

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

e. The procedures set forth in subparagraphs (d)4.-9., above, shall be repeated for each subsequent race subject to a manual recount.

11. 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.

(e) Touchscreen ballot manual recounts.

1. 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 up to 5") and the voter marks 2 candidates, the votes for those two marked candidates shall count.

2. 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 objects to a counting team's decision, the names of the counting team's members, the counting team's initial determination, basis for the objection, and 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(6)(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.

(f) Manual recount of hybrid voting system's paper outputs. The procedures for a manual recount of the paper output from a hybrid voting system are identical to those specified in subparagraphs (b), (c), and (d), above, as applicable. If the hybrid voting system's paper output is identical to the optical scan ballot mentioned in this paragraph, the paper output may be treated as an optical scan ballot for the recount.

(6) Unexpected circumstances. If issues or circumstances arise involving a recount or its procedures which neither this rule nor any other law or rule covers, the canvassing board will decide the issue by a majority vote.

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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