

**1S-2.031 Recount Procedures.**

(1) General application provisions.

(a) All procedures relating to machine and manual recounts shall be open to the public.

(b) At least two members of the county canvassing board shall be present during all times a machine or manual recount is being conducted.

(c) All recounts are to be ordered by the respective county canvassing board or canvassing commission responsible for certifying the results of the race or races being recounted.

(d) In a machine recounts ordered by the county canvassing board, such board shall notify the candidates or committees in the affected race or races that a machine recount will be conducted. If a machine recount is ordered by the Elections Canvassing Commission, the Division of Elections shall notify the candidates or committees in the affected race or races that a machine recount will be conducted. In addition, notice of all machine recounts shall be posted on the door of the public entrance to the building where the office of the supervisor of elections is housed so that the notice is accessible to the public 24 hours a day.

(e) In all manual recount, after the completion of a manual recount, the county canvassing board shall examine the ballots that were not allocated to any candidate or issue choice to determine if revisions are necessary to Rule 1S-2.027, F.A.C. (Clear Indication of Voter's Choice on a Ballot) and shall notify the Division of Elections if revisions are necessary.

(f) All machine and manual recounts conducted pursuant to this rule must be completed in such a manner as to provide the county canvassing board sufficient time to comply with the provisions of Section 102.112, F.S. Any returns not received by the department by the time specified in subsection (2) of Section 102.112, F.S., shall be ignored and the results on file at that time shall be certified by the department.

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

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

2. "Ballot image report" means the printout of ballot images for each machine or precinct generated pursuant to subparagraph (4)(b)1.

3. "Complete canvass report" means the voting system report from the machine recount that contains the results for each contest in each precinct (such report includes the total votes for each candidate or issue, the total number of undervotes and overvotes for each candidate or issue, and the total ballots cast for each race or issue).

4. "Overvote" means that the elector designated more names than there are persons to be elected to an office or designated more than one answer to a ballot issue.

5. "Undervote" means that the tabulator recorded no vote for the office or issue or that the elector did not designate the number of choices allowed for the office or issue.

(2)(a) Optical Scan Ballot Machine Recounts. The following procedures apply to machine recounts of optical scan ballots involving all county, multicounty, federal or statewide offices or issues required by law to be recounted:

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

2. Procedure when only one race is being recounted or where more than one race is being recounted and the voting system will allow for the sorting of overvotes and undervotes in more than one race at the same time:

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

b. The county canvassing board or its representatives shall put each ballot through the tabulating equipment and determine the votes in the recounted race or races. During this process, the overvoted and undervoted ballots in the recounted race or races must be sorted.

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

3. Procedure when more than one race is being recounted by machine and the voting system does not allow the sorting of overvotes and undervotes on more than one race at a time:

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

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

c. Prior to a manual recount being conducted, the supervisor of elections shall change the election parameters and the ballots for the manually recounted race or races shall be put back through the tabulating equipment and overvotes and undervotes for each race shall be sorted separately.

(b) Touchscreen Ballot Machine Recounts. The following procedures apply to machine recounts of touchscreen ballots involving all county, multicounty, federal or statewide offices or issues required by law to be recounted:

1. The county canvassing board shall be required to produce printed vote totals for the affected race or races for each precinct and early voting site. The county canvassing board shall test the accuracy of the printed vote totals from each precinct and early voting site by comparing the total number of votes for the affected race or races with 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 printed vote totals shall then be used as set forth in subparagraph 2.

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

(3) Optical Scan Ballot Manual Recount. The following procedures apply to manual recounts of optical scan ballots involving all county, multicounty, federal or statewide offices or issues required by law to be recounted:

(a) Ballots with overvotes and undervotes shall be transported to the location of the manual recount by two members of the county canvassing board and a sworn law enforcement officer. From the time the manual recount is started until completion of the recount, including times of recess, the ballots shall be guarded by a sworn law enforcement officer.

(b) If the manual recount is ordered by the Elections Canvassing Commission, the Division of Elections shall notify the candidates and chairmen of the state executive committee of the political parties, if applicable, entitled to representatives or the chairmen of the political committees, if any, in the case of a ballot issue, that a manual recount has been ordered. The candidates or chairmen are responsible for contacting the supervisor of elections in each county involved in the manual recount to find out when and where the recount will be conducted and the number of representatives such candidate or committee is entitled to have present during the manual recount process.

(c) If the manual recount is ordered by the county canvassing board, the supervisor of elections shall notify the candidates and chairmen of the county executive committee of the political parties, if applicable, entitled to representatives or the chairmen of the political committees, if any, in the case of a ballot issue, that a recount has been ordered and shall provide information regarding the time and the place of the manual recount and the number of representatives such candidate or committee is entitled to have present during the manual recount process.

(d) In addition, each county canvassing board shall provide public notice of the time and place of the manual recount immediately after determining the need for a manual recount pursuant to Section 102.166, F.S. The notice shall be in either a newspaper of general circulation in the county or posted in at least four conspicuous locations in the county. Because of the time constraints in conducting the manual recount, the canvassing board shall also contact media outlets in the community so that the public is made aware of the recount as soon as possible. The manual recount shall begin as soon as practicable in order for the recount to be concluded in time for the certification of results to be submitted pursuant to Section 102.112, F.S.

(e) 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 and the press (observers) shall be allowed to observe the recount from a separate area designated by the county canvassing board, which area may be outside of the actual recount area but which will allow the observers to view the activities. In addition to the sworn law enforcement officer guarding the ballots, there shall be a sworn law enforcement officer to keep order in and around the recount area.

(f) The county canvassing board shall determine the number of overvotes and undervotes to be manually recounted. If the recount involves candidates or issues on a statewide or multicounty basis, each county canvassing board shall notify the Elections Canvassing Commission of the number of overvotes and undervotes in the county for the affected race. Any candidate whose ultimate success or failure in the race could be adversely or favorably impacted by the manual recount, presuming recount results most favorable and least favorable to the candidate, shall be entitled to representatives at the recount as provided in paragraph (g).

(g) Each candidate entitled to representatives as outlined in paragraph (f) is entitled to a number of representatives equal to the number of counting teams plus an additional representative for the county canvassing board. If the race being recounted is a partisan race, each political party with candidates entitled to representatives is entitled to one representative. Each candidate or political party entitled to representatives must provide a list of the names of each representative designated.

(h) In order to be entitled to representatives at the manual recount, a political committee supporting or opposing a ballot issue which is being recounted must have provided in its statement of organization, on file before the election, that the committee is specifically supporting or opposing the issue in question. If more than one committee is registered as supporting or opposing the issue, each side shall be entitled to one representative per counting team plus one for the county canvassing board, regardless of the number of committees supporting or opposing the ballot issue. The county canvassing board shall notify each committee chairman of the number of representatives it is entitled to have present at the recount, which shall be determined by taking the total number of representatives allowed and dividing it by the number of registered committees on that side of the issue. The committee chairman must provide a list of the names of each representative designated.

(i) In the case of a manual recount regarding the retention of a judicial candidate, the judicial candidate is entitled to representatives equal to the number of counting teams plus an additional representative for the county canvassing board. If there are political committees organized to oppose the retention of such judicial candidate, those committees are entitled to representatives pursuant to paragraph (h).

(j) Representatives and observers must not interfere with or disturb the recount in any way. If the conduct of the representatives or observers impedes the recount process, the recount will stop until the situation is corrected. If the disturbance continues, upon majority vote of the county canvassing board, the persons causing the disturbance shall be removed from the premises by the law enforcement officer charged with maintaining order at the recount.

(k) Prior to the beginning of the manual recount, the county 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. 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.

(l) Each counting team shall review the ballots before them to determine if there is or is not a clear indication that the voter has made a definite choice, as specified in Rule 1S-2.027, F.A.C. If the counting team is unable to make the determination, or if there is an objection to the decision of the counting team by a designated representative, the ballot shall be set aside for the county canvassing board's determination.

(m) Each counting team shall place the ballots in stacks indicating:

1. Votes for each candidate or issue choice;
2. Ballots which the counting team has determined there is no clear indication that the voter made a definite choice for an office or ballot question; and
3. Ballots to be set aside for the county canvassing board's determination.

(n) The counting team shall count and record the number of votes for each candidate or issue choice, the number of ballots which the counting team has determined there is no clear indication that the voter made a definite choice, and the number of ballots which are to be given to the canvassing board for its determination and shall submit those totals to the county canvassing board.

(o) Each ballot set aside because the counting team was unable to make a determination that there is a clear indication that the voter has made a definite choice must be placed in a separate envelope with a notation of the precinct number, why the team was unable to make the determination, and the names of the members of the counting team. If a ballot was set aside because of an objection to the decision of the counting team by a representative, the envelope must contain the precinct number, the names of the members of the counting team, the counting team's initial determination, the reasoning behind the challenge and the name and representative capacity of the person bringing the challenge.

(p) The county canvassing board shall review each ballot set aside to determine if there is or is not a clear indication that the voter has made a definite choice, as specified in Rule 1S-2.027, F.A.C. All three members of the county canvassing board must be present for this determination and the determination must be by majority vote.

(q) 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. The county 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.

(r) The activities of the county canvassing board in making determinations of ballots to be counted shall be recorded by either audio or audio/video tape. In addition, minutes of the manual recount shall be made and approved by the canvassing board. All tapes and minutes shall be made available to the public within 2 weeks of the time the canvassing board certifies the results of the election.

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

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

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

3. 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.

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

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

6. 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.

(t) If ballots were not sorted during the machine recount, the following procedures shall be used:

1. The election parameters shall be changed so that overvotes and undervotes in the first manually recounted race are identified and sorted for manual review.

2. Following the manual recount, if there is another race to be recounted, 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.

3. 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.

(4) Touchscreen Ballot Manual Recount.

Pursuant to Section 102.166, F.S., the purpose of the review of overvotes and undervotes in a manual recount is for the county canvassing board to determine whether such review of an overvoted or undervoted ballot cast by a voter in the recounted race or issue reveals a "clear indication on the ballot that the voter has made a definite choice."

(a) The following standards apply in a manual recount of overvotes and undervotes as provided specifically by Section 102.166, F.S., on a touchscreen voting system, to determine whether there is a clear indication on the ballot image report that the voter has made a definite choice:

1. A clear indication on the ballot that the voter made a definite choice not to cast an overvote shall be determined by the presence on the ballot image of a selection in the race or issue or of an indication of an undervote in the manner proscribed by subparagraph 2. Touchscreen voting systems do not permit a voter to cast an overvote; therefore, the canvassing board shall accept the machine recount as conclusive that there are no overvotes in the manually recounted race or issue.

2. The clear indication that the voter has made a definite choice to undervote shall be determined by the presence of the marking, or the absence of any marking, that the manufacturer of the certified voting system indicates shall be present or absent to signify an undervote. The following represents the manufacturer indicated markings of an undervote for each respective certified voting system:

a. ES&S iVotronic touchscreen voting system. A clear indication that the voter made a definite choice to undervote shall be determined by the word "undervote" on the ballot image for the affected race or issue, as illustrated in Form DS-DE 72/105 (eff.11-3-05), which is entitled "Samples of Ballot Image Reports for

the following certified voting systems: ES&S iVotronic Touchscreen Voting System; Sequoia Touchscreen Voting System; and Diebold Touchscreen Voting System,” and is hereby incorporated herein by reference and available from the Division of Elections.

b. Sequoia touchscreen voting system. A clear indication that the voter made a definite choice to undervote shall be determined 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, each as illustrated in Form DS-DE 72/105 (eff. 11-3-05), which is entitled “Samples of Ballot Image Reports for the following certified voting systems: ES&S iVotronic Touchscreen Voting System; Sequoia Touchscreen Voting System; and Diebold Touchscreen Voting System,” and is hereby incorporated herein by reference and available from the Division of Elections.

c. Diebold touchscreen voting system. A clear indication that the voter made a definite choice to undervote shall be determined 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, each as illustrated in Form DS-DE 72/105 (eff. 11-3-05), which is entitled “Samples of Ballot Image Reports for the following certified voting systems: ES&S iVotronic Touchscreen Voting System; Sequoia Touchscreen Voting System; and Diebold Touchscreen Voting System,” and is hereby incorporated herein by reference and available from the Division of Elections.

3. 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 5”) and the voter marks 2 candidates, the votes for those two marked candidates shall count.

(b) The following procedures apply to manual recounts of undervotes on touchscreen voting systems involving all county, multicounty, federal or statewide offices or issues required by law to be recounted:

1. The county canvassing board shall order the printing of one (1) official copy of the ballot image report from each touchscreen voting machine that has recorded undervotes for the affected race or issue. If the certified system does not permit the printing of a ballot image report by touchscreen voting machine, then the canvassing board shall order the printing of the ballot image report for each precinct and early voting site that has recorded undervotes for the affected race or issue. The ballot image report for each certified voting system shall be substantially in the form provided in Form DS-DE 72/105 (eff. 11-3-05), which is entitled “Samples of Ballot Image Reports for the following certified voting systems: ES&S iVotronic Touchscreen Voting System; Sequoia Touchscreen Voting System; and Diebold Touchscreen Voting System,” and is hereby incorporated herein by reference and available from the Division of Elections. If the certified voting system is capable of electronic sorting and identifying of undervotes, the canvassing board must order the printing of the ballot image report using such capabilities. The county supervisor of elections shall maintain a custody log for each ballot image report and otherwise assure that the ballot image report remains secure and free of tampering at all times.

2. The ballot image report shall be examined by the counting teams for the race or issue being recounted to identify and highlight ballot images containing undervotes for the affected race or issue and to determine if there is a clear indication on the ballot 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 images with undervotes in place of the counting team process.

3. If an objection is made by a representative (designated pursuant to paragraphs (f)-(i) of subsection (3) of this Rule) to a decision of the counting team, an attachment shall be made to the ballot image report that contains the names of the members of the counting team, the counting team’s initial determination, the reasoning behind the objection, and the name and representative capacity of the person making the objection. 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.

4. All objections pursuant to this subsection must be resolved by the county canvassing board. 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.

5. 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 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.

6. 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 machine 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 re-tabulate 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 county 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; provided, however, that in no event shall the county canvassing board order or conduct any diagnostic examination that may result in the clearing of any vote totals or in any way affecting the memory of machine.

7. All three (3) members of the county canvassing board must be present for any determination or decision made pursuant to this subsection and the determination or decision must be by majority vote.

8. The following provisions of this rule also apply to manual recounts of touchscreen voting systems:

a. If the manual recount is ordered by the Elections Canvassing Commission, the Division of Elections shall notify the candidates and chairmen of the state executive committee of the political parties, if applicable, entitled to representatives or the chairmen of the political committees, if any, in the case of a ballot issue, that a manual recount has been ordered. The candidates or chairmen are responsible for contacting the supervisor of elections in each county involved in the manual recount to find out when and where the recount will be conducted and the number of representatives such candidate or committee is entitled to have present during the manual recount process.

b. If the manual recount is ordered by the county canvassing board, the supervisor of elections shall notify the candidates and chairmen of the county executive committee of the political parties, if applicable, entitled to representatives or the chairmen of the political committees, if any, in the case of a ballot issue, that a recount has been ordered and shall provide information regarding the time and the place of the manual recount and the number of representatives such candidate or committee is entitled to have present during the manual recount process.

c. In addition, each county canvassing board shall provide public notice of the time and place of the manual recount immediately after determining the need for a manual recount pursuant to Section 102.166, F.S. The notice shall be in either a newspaper of general circulation in the county or posted in at least four conspicuous locations in the county. Because of the time constraints in conducting the manual recount, the canvassing board shall also contact media outlets in the community so that the public is made aware of the recount as soon as possible. The manual recount shall begin as soon as practicable in order for the recount to be concluded in time for the certification of results to be submitted pursuant to Section 102.112, F.S.

d. 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 and the press (observers) shall be allowed to observe the recount from a separate area designated by the county canvassing board, which area may be outside of the actual recount area but which will allow the observers to view the activities. In addition to the sworn law enforcement officer guarding the ballots, there shall be a sworn law enforcement officer to keep order in and around the recount area.

e. The county canvassing board shall determine the number of undervotes to be manually recounted. If the recount involves candidates or issues on a statewide or multicounty basis, each county canvassing board shall notify the Elections Canvassing Commission of the number of undervotes in the county for the affected race. Any candidate whose ultimate success or failure in the race could be adversely or favorably impacted by the manual recount, presuming recount results most favorable and least favorable to the candidate, shall be entitled to representatives at the recount as provided in sub-subparagraph f.

f. Each candidate entitled to representatives as outlined in sub-subparagraph e. is entitled to a number of representatives equal to the number of counting teams plus an additional representative for the county

canvassing board. If the race being recounted is a partisan race, each political party with candidates entitled to representatives is entitled to one representative. Each candidate or political party entitled to representatives must provide a list of the names of each representative designated.

g. In order to be entitled to representatives at the manual recount, a political committee supporting or opposing a ballot issue which is being recounted must have provided in its statement of organization, on file before the election, that the committee is specifically supporting or opposing the issue in question. If more than one committee is registered as supporting or opposing the issue, each side shall be entitled to one representative per counting team plus one for the county canvassing board, regardless of the number of committees supporting or opposing the ballot issue. The county canvassing board shall notify each committee chairman of the number of representatives it is entitled to have present at the recount, which shall be determined by taking the total number of representatives allowed and dividing it by the number of registered committees on that side of the issue. The committee chairman must provide a list of the names of each representative designated.

h. In the case of a manual recount regarding the retention of a judicial candidate, the judicial candidate is entitled to representatives equal to the number of counting teams plus an additional representative for the county canvassing board. If there are political committees organized to oppose the retention of such judicial candidate, those committees are entitled to representatives pursuant to sub-subparagraph g.

i. Representatives and observers must not interfere with or disturb the recount in any way. If the conduct of the representatives or observers impedes the recount process, the recount will stop until the situation is corrected. If the disturbance continues, upon majority vote of the county canvassing board, the persons causing the disturbance shall be removed from the premises by the law enforcement officer charged with maintaining order at the recount.

j. Prior to the beginning of the manual recount, the county 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.

k. The activities of the county canvassing board in making determinations of ballots to be counted shall be recorded by either audio or audio/video tape. In addition, minutes of the manual recount shall be made and approved by the canvassing board. All tapes and minutes shall be made available to the public within 2 weeks of the time the canvassing board certifies the results of the election.

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