



## Summary of Colorado's Recount Procedures

November 2022

The following is a summary of the laws and rules governing recounts. While you should use this document as a guide, you should also review Article 10.5 of Title 1 and Election Rule 10 as you prepare for any recounts.

### 1. Cost of a recount

- **Mandatory recount costs: 1-10.5-101 (2), C.R.S.** The entity that certified the candidate or ballot measure to the ballot must pay the costs incurred by the county in conducting a mandatory recount. Costs incurred are collected following the recount in this circumstance.
- **Requested recount costs: 1-10.5-106 (2), C.R.S.** The interested party must pay the costs incurred by the county in conducting a requested recount.
  - One day after receiving notice of a requested recount, the designated election official (county or state, based on who certified candidate or issue to the ballot) must prepare a cost estimate and provide that estimate to the requesting interested party.
    - Counties must use the SOS approved recount cost estimate form for this purpose. The form can be found under “canvass” on the SOS approved forms page.
  - The interested party must pay the full cost, based on the estimate, within one day after receiving the estimate. If payment is not received timely, then the recount does not move forward.
  - If received, the payment must be placed in escrow until the recount has been completed.
    - If the recount does not bring the final tally to within the automatic recount range, then the county keeps the funds (or funds are distributed to counties if recount is for a state candidate).
    - If the final tally does fall within automatic recount range, or changes the results, then the county must refund the cost to the interested party.
- **Rule 10.10.1** Counties conducting a recount for a mandatory state certified race must submit a request for reimbursement using the Secretary of State form.
  - Meals, normal overhead costs, and regular employee compensation are not coverable costs in a mandatory recount.
  - Pay for election judges, temporary staff, canvass board, and overtime for staff is coverable.
  - Costs for mailing and notices as well as copies and other office expenses directly related to the recount are also coverable.

## **2. Recount notice**

- **1-10.5-105, C.R.S.** Counties must notify candidates, petition representatives, any relevant governing body, or any relevant issue committee of the recount before it begins by email, telephone, fax, or personal service. If the recount is for a state-certified race, the Secretary of State will provide notice, and counties are not required to provide their own individual notices.

## **3. Timing of the recount**

- **1-10.5-102, 1-10.5-103 C.R.S.** A recount may begin:
  - after the county canvass is complete; or
  - after the Secretary of State orders, if for a state certified race.
- **1-10.5-102 (2), 1-10.5-103, 1-10.5-106 (2), C.R.S.** Counties must complete a mandatory recount no later than the thirty fifth day after the election and a requested recount no later than the thirty seventh day after the election.
- **Rule 10.9.4** If there is a recount for a state certified race, county clerks must coordinate the scheduling of the recount through the Secretary of State's Office.
- **Rule 10.9.5** If there is a local recount that spans multiple counties, then the controlling county defined by Rule 4.2.2 must coordinate the scheduling of the recount.

## **4. Cancelling a mandatory recount**

- **1-10.5-103** A political subdivision who referred a ballot issue or question to a county may waive an automatic recount by giving the clerk written notice by the 23<sup>rd</sup> day after the election.
- **Rule 10.9.6** Losing candidates may submit a letter of withdrawal in accordance with section 1-4-1001, C.R.S. to the candidate's DEO before a recount begins. If a withdrawal is submitted the county clerk need not conduct a recount for that candidate's race.

## **5. Canvass board's role and duties generally**

- **1-10.5-107 (1), C.R.S.** The canvass board that officiated in the original certification conducts the recount. Canvass board members unable to serve in the recount may be replaced in accordance with Section 1-10-101, C.R.S.
- **1-10.5-107 (2), C.R.S.** The canvass board may employ assistants and clerks as necessary.

- **1-10.5-107 (3), C.R.S.** The canvass board may require the production of documentary evidence regarding votes cast or counted and may amend the abstract based on its findings.
- **Rule 10.9.1** The purpose of a recount is to re-tabulate the ballots.
- **Rules 10.3.2 (d) and 10.11** The canvass board's role in a recount includes selecting ballots for the random test, observing the recount of ballots, and certifying the results.

## 6. Role of watchers

- **Rule 8.10.2** Watchers must have access that allows them personal visual access to read documents, writings or electronic screens.
- **Rule 8.8** The number of watchers permitted is dependent on the process, the number of judges, and is subject to local safety codes.
- **Rule 8.1** Watchers must be qualified and sworn in. In a general election, watchers may be appointed by county chairperson of the party, or by an unaffiliated candidate. A candidate involved in a recount, or a member of the candidate's family by blood, marriage, or civil union, may not be personally appointed as a watcher for the recount.
- **Rule 8.6.1** Watchers are subject to removal under the same standards that apply during regular election activities.

## 7. Testing Prior to Recount

### a. Generally

- **1-10.5-102 (3) (a) and (b), C.R.S. and Rules 10.12.2, 10.13.1** The canvass board must, prior to any recount in which scanners will be used, randomly choose and test voting devices used in the original race. The canvass board must compare a manual count of the paper test ballots against the machine count of the randomly selected scanners or voting devices. If the results of the comparison are identical, or if any discrepancy can be attributed to voter or ballot marking error, the county must conduct the recount in the same manner as the original count.
- **Rule 10.13.1** If there are unresolvable discrepancies in the test, the recount must be conducted as a hand count in that county under Rule 10.13.4.
- **Rule 10.12.2 (b)** A bipartisan team of judges or clerk staff must hand tally the recount contest on the test ballots to verify there are no discrepancies on the voting devices chosen.
- **Rule 10.12.2(c)** The test is limited to the race or measure being recounted.

### b. Equipment tested

- **Rule 10.12.1** The canvass board must review the post-election audit before selecting the equipment to be tested.

- **Rule 10.12.2** The clerk must test all ballot scanners that will be used in the recount.

*c. Test Deck*

- **Rule 10.12.2** The county recount test deck must include:
  - Every ballot style and precinct style (when applicable) containing the recounted contest.
  - Enough ballots to mark every vote position and every possible combination of vote positions in the recounted contest, including overvotes, undervotes, blank voted contests, and write-in votes, to the extent applicable
    - **Secretary of State Guidance:** The county test deck for the recount should also include each type of ballot stock that the county used in the election: ballots printed from ballot marking devices, ballots printed on demand, and commercially printed ballots.
  - For a required recount, an additional 10 test ballots each for two canvass board members of different affiliations marked by those board members.
  - For requested recounts, the person or organization requesting the recount and any other candidate or organization directly involved in the recount may also mark 10 ballots.
    - **Secretary of State Guidance:** in a requested recount, allow the watcher appointed by a candidate to mark up to 10 ballots if the candidate themselves is not present.
- **Secretary of State Guidance** The canvass board may opt to use the county’s test deck from the original pre-election LAT, or create another test deck especially for the recount that satisfies the above requirements. Also, once the recount LAT is completed, the county should:
  - Generate a summary results report in paper format for the canvass board to verify against their hand tally of the test ballots. The canvass board members should sign and date the LAT summary results report, and state the political party with which they are affiliated.
  - Backup the recount election project or database containing the test results
  - If desired, export a recount LAT results file and CVR file
  - Ask the canvass board to observe the voting system operator clear all test results from the recount project or database
  - Generate a zero report to document that all test results have been cleared from the recount project or database before any original counting batches are rescanned. The canvass board members should date, sign, and state their party affiliations on the zero report too.

## 8. Counting ballots

*a. Generally*

- **Rule 10.9.2; 10.9.3:**

- A county that successfully completed a risk limiting audit and reported no discrepancies in the recount contest (whether or not that contest was the target of the RLA) is not required to rescan ballots during a recount.
  - However, the losing candidate or interested party in a recount may request that counties rescan ballots regardless.
    - This request is due no later than the 28<sup>th</sup> day after the election for required recounts and 29<sup>th</sup> day for requested recounts.
    - For the 2022 primary, these dates are:
      - July 26 for required recount
      - July 27 for requested recount
  - **Rule 10.13.2** If a rescan is conducted, the county clerk and canvass board must maintain a clear audit trail throughout the recount, including a log of original transfer case or ballot box seal numbers and the corresponding replacement seal numbers.
  - **Rule 10.13.5** The re-tabulation process must be precise and controlled. Each container of ballots must be re-tabulated and resealed before the next container is opened for scanning on a particular tabulator.
    - Secretary of State Guidance: This protocol does not prohibit a county from using multiple teams of counting judges on different scanning stations. Each scanning team should rescan all ballots in a storage container and re-seal the storage container before opening the next storage container, but multiple teams may follow the same process simultaneously.
  - **Rule 10.13.6** The county clerk and recorder must ensure that the number of ballots counted according to the final results for that race or measure must be available during the recount for comparison purposes.
  - **Rule 10.13.4** Counties who conducted a hand count during initial tabulation must conduct the recount by hand count.
  - **Secretary of State Guidance:** For recounts in which the county rescans all ballots:
    - We strongly recommend that the county scan the original counting batches on the same tabulators and in the same order as the initial count. This practice makes identifying differences between the initial count and recount much easier and efficient, should that be necessary.
    - If rescanning the original counting batches on the same tabulators and in the same order, remember to return the ballots randomly selected for the RLA to their original batches and positions within the batch, if your county's business process is to store RLA materials in their own containers after the RLA is completed.
- b. Reviewing ballots for voter intent*
- **Rule 10.13.3** Ballots subject to adjudication must be reviewed for voter intent using the standards in Rule 18 and the voter intent guide.

- **Rule 10.13.3 (a) and (b).** In contrast to the regular election, election judges must review for voter intent all ballots with overvotes, undervotes, and blank votes in the recount race for voter intent. This requirement means the county must add undervotes and blank voted contests in the recount contest only to the adjudication conditions used in the recount according to the provider's recommendations. Counties must use the same voter intent guidelines as the regular election (but the review need not necessarily yield the same result).
- **Secretary of State Guidance** Election judges may only review voter intent on the races involved in the recount.

*c. Documents the canvass board may review*

- **1-10.5-107 (3)** The canvass board may require the production of any documentary evidence regarding any vote cast or counted.
- **Rule 10.11** The canvass board's role in conducting a recount includes selecting ballots for the test, observing the recounting of ballots, and certifying the results.
- **Secretary of State Guidance**
  - The canvass board may only review the documents it needs to complete the re-tabulation. This includes original ballots, accounting forms, and duplication logs.
  - A decision by the canvass board should be made by a majority of the board.
  - The canvass board may not review signatures on ballot return ballot envelopes.

*d. Reporting recount results*

- **1-10.5-107 (4), C.R.S.** After the recount, the canvass board must make the returns to the county clerk and recorder and to all who received the notice of recount. The canvass board must also meet and issue an amended abstract of votes cast, if necessary, for the recounted race or races and deliver it to the county clerk and recorder.
- **1-10.5-107 (5), C.R.S.** The county clerk and recorder must notify the governing body of the recount results.
- **Rule 10.14.1** The clerk must report the totals in summary form as follows:
  - Summary results report of votes cast for all candidates or voting choices in the recounted contest only, showing cards counted, overvotes, undervotes, blank voted contests, and valid votes for eligible write-in candidates, to the extent applicable..
  - The summary results report should report results in the same manner (by ballot style or district) as the initial results.
- **Secretary of State Guidance**
  - Canvass board members should be clear that they are to amend and recertify the abstract, not redo the entire abstract.
  - Before exiting the voting system, the county should backup the voting system project or database used to conduct the recount. In addition, the county may also export recount results and CVR files if the county desires to retain records of the recount in

both digital and paper formats. Note: Unlike the initial count, the results and CVR files will not be uploaded to ENR or the RLA software. The recount results export and CVR files will contain un-adjudicated results for all contests except the recounted race or ballot measure, and those un-adjudicated results will not match the original certified, fully adjudicated results. Counties following this practice should be prepared to explain the variances between the original and recount results and CVR files.

- When the canvass board certifies an amended abstract of votes cast showing the changed vote totals following the recount, the county will also need to update ENR to reflect the changed vote totals in the recounted contests. When you are ready to update ENR, please contact the Voting Systems team at 877-436-5677 for appropriate instructions.

## 9. Challenges to the recount

### *a. State races*

- **1-10.5-109(1) (a), C.R.S.** Any interested party to a recount that has reasonable grounds to believe that the recount is not being conducted in a fair, impartial, and uniform manner may apply to the Denver District Court for an order requiring a county clerk to stop the recount and requiring the Secretary of State to conduct the recount. The county clerk will be an official observer to any recount.

### *b. Local races*

- **1-10.5-109 (1) (b), C.R.S.** Any candidate in a race subject to a recount or representative or opponent to an issue that is the subject of a recount who has reasonable grounds to believe that the canvass board or county is not conducting the recount in a fair, impartial, or uniform manner may apply to the district court for the political subdivision for an order requiring the designated election official to stop the recount, give the appropriate official all election records used in conducting the recount, and require the appropriate official to conduct the recount. If the county clerk and recorder is not the designated election official, then the county clerk and recorder is the appropriate official to conduct the recount. If the county clerk and recorder is the designated election official, then the Secretary of State is the appropriate official to conduct the recount. The designated election official will be an official observer to any recount.

If you have any questions, please contact Caleb Thornton at [caleb.thornton@coloradosos.gov](mailto:caleb.thornton@coloradosos.gov) or 303-894-2200 ext. 6386 or Dwight Shellman at [dwight.shellman@coloradosos.gov](mailto:dwight.shellman@coloradosos.gov) or 303-860-6927.