

Chapter 6

Recounts

This chapter of the handbook contains information about recounts for offices, recounts for public measures, and administrative recounts. It also provides instructions on how to administer recounts.



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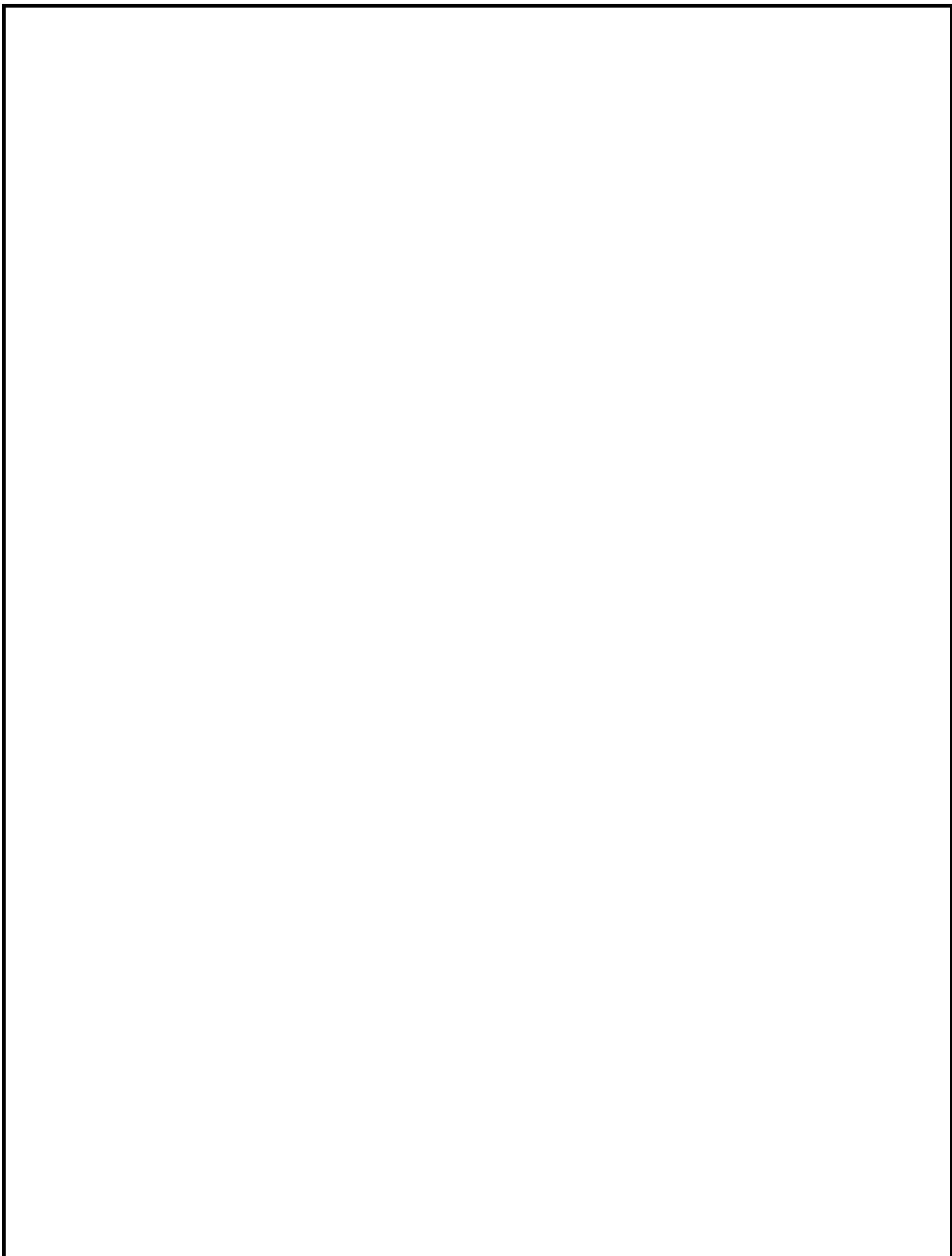
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Overview

What is a Recount?

A recount is a formal process for recounting the ballots which were voted and counted for an office or public measure. This includes any disputed ballots returned under §50.5 that were “objected to” but counted. Recounts do not include rejected absentee or provisional ballots, spoiled ballots, and defective ballots.

[§50.48, IAC 721—26.104(1)]

Recounts vs. Election Contests

A recount is a formal procedure in which ballots that were voted and counted at an election are counted again.

An election contest is a formal process for challenging the results of an election by proving that improper activities resulted in an incorrect outcome. (See the Contest chapter for more information.)

Board of Supervisors Orders Recounts

When a request for a recount or a petition requesting a recount is received, notify the board of supervisors. The board must submit a written order for the recount to the auditor. This can be a motion or resolution the board has passed.

[§50.48(1)(a), 331.302(1)]

Publishing Notice of Recount

Notice of the recount does not have to be published. Recounts are a purely ministerial function rather than a policymaking one, so they are not subject to the notification requirements of the Iowa open meetings law.

[IAC 721—26.106]

Observers

Recounts, like all canvasses of votes, are open to the public. Observers may watch and listen, but they may not participate in or interfere with the recount. Observers cannot touch ballots.

[IAC 721—26.106]

Compensation of Recount Board

The *Iowa Code* does not provide for any compensation for recount board members; they serve without pay. Because the ASVP board is required to serve as the recount board for administrative recounts, they may be compensated. Consult with the county attorney regarding compensation questions.

Recount Requests

Who May Request a Recount

Recounts for Offices

Any candidate whose name was printed on the ballot may file a request for a recount, including the candidate who received the most votes.

A write-in candidate may file a request for a recount but only if the person is legally qualified to seek and hold the office for which the candidate received votes. The write-in candidate may request a recount only in the precincts in which the write-in candidate received votes.

For offices that are elected as a team (i.e. president and vice president, governor and lieutenant governor), either of the two candidates may sign a request for a recount or designate a member of the recount board.

[§50.48(1)(a), IAC 721—26.100, 26.101]

Recounts for Public Measures

Eligible electors can petition to request a recount for a public measure. Petition signers must have been entitled to vote on the public measure in question or would have been so entitled if registered to vote. Signers are not required to have voted in the election. Petitions must be signed by a number of eligible electors equal to at least one percent of the total votes cast for the public measure or 10, whichever is greater.

[§50.49(1)]

Recount Requests

Recount requests and petitions must include the following:

- Office or public measure for which requesting the recount,
- Precinct(s) to be recounted, and
- A recount board designee.

A recount request from a candidate must be signed by the candidate.

[§50.48, 50.49]

The original recount request must be filed. It cannot be filed electronically.

Consult with the county attorney if unsure about the legal sufficiency of a recount request.

A sample “Request Form for Recount of Votes Cast for Office” and “Petition to Request Recount of Public Measure” are available in the Election Forms Library.

Best Practice: Stamp the request with the date and time it was received. This step is beneficial in case multiple recount requests are filed.

[IAC 721—26.103(1)]

Recount Request Deadline

For most elections, recount requests for offices and public measures must be filed no later than 5 p.m. on the third day after the county canvass of votes.

[§50.48(1), 50.49(1)]

Exception: The recount request deadline for city primary elections and the regular city election in cities where the council has adopted a runoff provision is 5:00 p.m. the day after the county canvass of votes.

[§50.48(7)]

The *Iowa Code* does not specify a first day for filing recount requests. However, the bond amount is calculated based on the official abstracts of votes. As long as both the request and the bond (if required) are filed by the request deadline, the requirements of *Iowa Code* §50.48 and §50.49 are met.

Filing Officer

All requests for recounts are filed with the auditor in the county where the election was held. When a city, school district, or other local office appeared on the ballot in more than one county the request must be filed with the control auditor who conducted the election for the jurisdiction.

When the request is for a recount of a federal or state office with territory in more than one county, the request must be filed in each county in which the candidate wants to have the ballots counted again.

[§50.48(1), 50.49(1)]

Required Notifications

Recounts for Offices

The auditor must notify the apparent winner as soon as a recount request has been successfully filed. Send a copy of the recount request to the apparent winner by certified mail. The auditor must also attempt to contact the apparent winner by telephone. The auditor should document attempts to contact the apparent winner.

[§50.48(1)(b)]

Apparent Winner

The apparent winner is the person who received the most votes for the office and who will apparently be declared the winner at the final canvass of votes for the office. The apparent winner for a statewide race is determined by the vote totals for the whole state, not in individual counties.

If the apparent winner of an election requested the recount, the person who received the next highest number of votes for that office must receive the official notice of the recount and must designate the second member of the recount board.

[IAC 721—26.100]

For partisan offices, if the apparent winner cannot be reached within 4 days, notify the chairperson of the political party or organization which nominated the candidate to serve on behalf of the candidate. Notify the county chairperson for county offices and notify the state party for state and federal offices.

[§50.48(1)(b)]

Important Note: The auditor must notify the SOS of the receipt of a recount request if the recount is for a state or federal office.

[§50.48(6)]

Recounts for Public Measures

Best Practice: Notify the SOS if the recount is for a statewide public measure.

Bonds

Filing Office and Bond Amounts

When bonds are required, the filing office and bond amounts are as follows:

Recounts for Offices

Office	File Bond With	Amount
Statewide Offices (including president, U.S. senator)	Secretary of State	\$1,000
U.S. Representative	Secretary of State	\$500
State Senator	Secretary of State	\$300
State Representative	Secretary of State	\$150
Any office voted upon countywide by the voters of a county with more than 50,000 population	County Auditor	\$200
All other elective offices	Control County Auditor	\$100

[§50.48(2)(a)]

Recounts for Public Measures

The bond for all public measure recounts, except for public measures appearing on the ballot statewide, is \$100. The bond must be filed with the auditor by the recount request deadline.

The bond for statewide public measure recounts is \$1,000 and is collected and held by the SOS Office.

[§50.49(4)]

Calculating Whether Bonds are Required for Office Recounts

Vote for No More Than One Offices

A bond is required when the election for the office was won or lost by more than one percent of the total votes cast or 50 votes, whichever is greater. Use the vote totals listed on the official abstracts of votes to determine whether a bond is required.

[§43.56(1), 50.48(2)]

Example:

Candidate A received 1,034 votes. Candidate B received 785 votes. There were 32 write-in votes. Total votes cast (TVC) were 1,851.

One percent of TVC = $1,851 \times 0.01 = 18.51$ (If the result is a fraction, round up.) → 19

Fifty is greater than 19, so if the difference is fewer than 50 votes, no bond will be required.

Difference = $1,034 - 785 = 249$

The difference of 249 is greater than 50 votes, so bond is required.

Vote for More than One Offices

A bond is required when the election for the office was won or lost by more than one percent of the total votes cast or 50 votes, whichever is greater. Use the vote totals based on the official abstracts of votes. Divide the total number of votes cast by the number of seats to be filled, then multiply that number by 0.01. If the result is a fraction, round up.

[§43.56(1), 50.48(2)]

Example:

Two at-large supervisors to be nominated. Candidate A received 692 votes. Candidate B received 644 votes. Candidate C received 356 votes. There were 18 write-in votes. Total votes cast (TVC) were 1,710. Candidate B requested a recount.

Divide 1,710 by 2 = $1,710 \div 2 = 855$

One percent of TVC = $855 \times 0.01 = 8.55$ (If the result is a fraction, round up.) → 9

Fifty votes is more than 9, so if the difference is fewer than 50 votes, no bond will be required.

Difference = $692 - 644 = 48$

The difference of 48 is less than 50 votes, so bond is not required if candidate B requested a recount.

Primary Election

If a candidate received the required 35% of the votes cast for the office, bond is required when the nomination for the office was won or lost by more than one percent of the total votes cast or 50 votes, whichever is greater.

[§43.56(1), 50.48(2)]

If no candidate received the required 35% of the votes cast for the office, the bond requirement is calculated from the number of votes needed to receive the nomination. No bond is required if the difference between the number of the votes needed to be nominated and the number of votes received by the candidate requesting the recount is less than 50 votes or one percent of the total votes cast, whichever is larger.

[§43.56(2)]

Example:

Three candidates ran for one open position. Candidate A received 455 votes. Candidate B received 440 votes. Candidate C received 411 votes. There were 44 write-in votes. Total votes cast (TVC) were 1,350, so candidates needed to receive at least 473 votes to meet the required 35% threshold.

Candidate A is requesting the recount.

One percent of TVC = 13.50 (If the result is a fraction, round up.) → 14

Fifty is greater than 14, so if the difference is fewer than 50 votes, no bond will be required.

Difference = 473 – 455 = 18

The difference of 18 is less than 50 votes, so bond is not required if candidate A requested the recount.

Bonds for Multicounty Offices

Use the vote totals from all counties where the office was on the ballot. If more than one candidate for a multicounty office requests a recount, the bond requirement must be calculated for each candidate. If a candidate must post a bond, the candidate must post only one bond, even if the candidate requests recounts in more than one county.

[§43.56(2), 50.48(2), IAC 721—26.102]

What Happens with the Bond

The bond must be kept under the control of the auditor or SOS until the official canvass of votes is corrected or completed.

If a bond was collected and the recount did not change the outcome of the election, the county keeps the bond and deposits it in the county's election fund. In the case of bonds held and then kept by the SOS, the bond is deposited in the state's general fund.

When the outcome of the election does change, the bond is returned to the party who posted the bond.

[§50.48(2)(b)]

Calculating Whether Bonds are Required for Public Measure Recounts

Majority Approval Required

If the measure does not require 60 percent approval, bond is required when the difference between the “yes” and “no” votes cast is more than one percent of the total votes cast or 50 votes, whichever is greater. Use the vote totals listed on the official abstracts of votes.

Example:

Sample County voted on a local sales and services tax question. “Yes” received 110 votes. “No” received 97 votes. The total votes cast (TVC) were 207.

One percent of TVC = $207 \times 0.01 = 2.07$ (If the result is a fraction, round up.) → 3

Difference = $110 - 97 = 13$

The difference is greater than one percent of TVC but less than 50 votes, so a bond is not required.

60 Percent Approval Required

If the measure requires 60 percent approval, bond is required if the difference between 60 percent of the total votes cast and the number cast for the losing side is more than one percent of the total votes cast on the measure or 50 votes, whichever is greater.

[§50.49(4)]

Example:

Fable School District voted on a school bond question. “Yes” received 60,113 votes. “No” received 48,210 votes. The total votes cast (TVC) were 108,323.

One percent of TVC = $108,323 \times 0.01 = 1,083.23$ (If the result is a fraction, round up.) → 1,084

Difference = $60,113 - 48,210 = 11,903$

The difference is greater than one percent of TVC and greater than 50 votes, so a bond is required.

Bonds for Multicounty Measures

If more than one county was involved in the public measure election, use the vote totals from all counties where the measure appeared on the ballot. Only one bond is posted when it is necessary to post a bond.

[§50.48(2), IAC 721—26.102]

What Happens with the Bond

The bond must be kept under the control of the auditor or SOS until the official canvass of votes is corrected or completed.

If a bond was collected and the recount did not change the outcome of the election, the county keeps the bond and deposits it in the county's election fund. In the case of bonds held and then kept by the SOS, the bond is deposited in the state's general fund.

When the outcome of the election does change, the bond is returned to the party who posted the bond.

[§50.48(2)(b)]

Recount Boards

Overview

A three-person board conducts recounts. No recount board may have more than three members. A candidate may not serve as his or her own designee on the recount board.

A staff member of the auditor's office may serve on a recount board if chosen to do so.

There are no other qualifications specified in the *Iowa Code* limiting or defining who a candidate may designate to serve on a recount board.

Choosing Recount Board Members for Recounts of Offices

Non-Primary Elections

The recount board consists of the following:

1. The first member of the recount board is chosen by the candidate who filed the request for the recount.

If more than one person files a request for a recount of the same office in the same county, the board member is the designee of the first person who filed.

2. If the recount requester was not the apparent winner, the second member is chosen by the apparent winner. If more than one person is to be elected to the office in question, the designation is made by the apparent winner who received the fewest votes.

If the recount requester was the apparent winner, the second member is chosen by the candidate who received the next highest number of votes for that office.

3. The third member is mutually agreed upon by the first two members.

Convene the first two members of the board no later than 9 a.m. on the seventh day following the canvass to determine the third member. They may be convened telephonically if necessary. If they cannot agree on a third member by 8 a.m. on the ninth day following the canvass, the chief judge of the district court must select the third member no later than 5 p.m. on the 11th day following the canvass. Notify the chief judge before the deadline if it appears likely he/she will be asked to choose a third member of the recount board.

[§50.48(3), IAC 721—26.103]

Exception: For city primary elections and regular city elections in cities with runoff election provisions, the first two members of the board must meet as soon as possible to determine the third member. The full recount board must convene by the sixth day after the election (the Monday following the election).

[§50.48(7)]

Primary Election

If a candidate received the required 35% of the votes and a recount request was filed, the recount board consists of the following:

1. The first member is chosen by the candidate who filed the request for the recount.

If more than one person files a request for a recount of the same office in the same county, the board member is the designee of the first person who filed.

2. If the recount requester was not the apparent winner, the second member is chosen by the apparent winner. If more than one person is to be elected to the office in question, the designation is made by the apparent winner who received the fewest votes.

If the recount requester was the apparent winner, the second member is chosen by the candidate who received the next highest number of votes for that office.

3. The third member is mutually agreed upon by the first two members.

If no candidate for an office received the required 35% of the votes, the board consists of the following:

1. The first member is chosen by the candidate who filed the request for the recount.
2. The second member is chosen by the candidate who received the highest number of votes. If that is the person who requested the recount, the person who received the second highest number of votes designates the second person.
3. The third member is mutually agreed upon by the first two members.

[§43.56(1)]

Convene the first two members of the board no later than 9 a.m. on the seventh day following the canvass to determine the third member. They may be convened telephonically if necessary. If they cannot agree on a third member by 8 a.m. on the ninth day following the canvass, the chief judge of the district court must select the third member no later than 5 p.m. on the 11th day following the canvass. Notify the chief judge before the deadline if it appears likely he/she will be asked to choose a third member of the recount board.

[§50.48(3), IAC 721—26.103]

Choosing Recount Board Members for Recounts of Public Measures

The recount board consists of the following:

1. The first member is designated by the petitioners on the request for recount petition.
2. The second member is designated by the auditor.
3. The third member is mutually agreed upon by the first two members.

Convene the first two members of the board no later than 9 a.m. on the seventh day following the canvass to determine who will be the third member. They may be convened telephonically if necessary. If the first two members cannot agree on a third member by 8 a.m. on the ninth day following the canvass, the chief judge of the district court must select the third member no later than 5 p.m. on the eleventh day following the canvass. Notify the chief judge before the deadline if it appears likely he/she will be asked to choose a third member of the recount board.

[§50.49(2), 50.49(3)]

Recount Administration

Convene the Full Recount Board

For city primary elections and regular city elections in cities with runoff election provisions, the recount board must convene by the sixth day after the election.

[§50.48(7)]

For all other elections, the recount board must complete the recount as expeditiously as possible and file its report by the deadline.

[§50.48(4)(a), 50.49(5)]

Location

The room where the recount is conducted should be arranged to enable observers to see and hear the process. Observers cannot touch ballots.

[IAC 721—26.106]

Delivery of Supplies and Ballots

Provide these tools to the board:

1. Recount Board Guide
2. Counting Votes guide
3. Manual Recount Tally Sheet (available in the Election Forms Library)
4. Report for Recount of Votes for Office/Public Measure (available in the Election Forms Library)

Complete the recount ballot tracking chart before delivering ballots to the recount board. A “Recount Ballot Tracking Chart” is available in the Election Forms Library.

When delivering ballots to the recount board, deliver only ballots that were accepted and counted, including any disputed ballots returned from the precinct pursuant to §50.5. Recount boards cannot consider:

- Rejected absentee or provisional ballots,
- Spoiled ballots, and
- Defective ballots.

[§50.48(4)(a), 50.49(5), IAC 721—26.104(1)]

Conducting the Recount

All three members of the board should be present when the ballot packages are opened. When opening ballots, the board should only work with one precinct at a time.

All ballots should be kept in view of the recount board members and any observers. The ballots should be guarded to protect them from theft or loss. The auditor or the auditor's designee is responsible for the security of the ballots and must supervise their handling.

[IAC 721—26.105(1)]

Best Practice: If one board member leaves the room, halt the process until that person returns.

The board can open only the sealed ballots from the precincts specified in the recount request or precincts specified by the recount board.

[§50.48(4)(a), 50.49(5), IAC 721—26.104(2)]

Adding Additional Precincts to the Recount

Recount boards may extend the recount to other precincts in the same county where the office or question appeared on the ballot when at least one member of the board deems it necessary to do so. The recount cannot be expanded to include other offices or questions.

[§50.48(4)(b), 50.49(5), IAC 721—26.104(2)]

Counting Standards

If the ballots were hand-counted on election day, the recount board must count the ballots by hand using the standards in IAC 721—26. Provide the “Counting Votes” guide to the recount board.

If voting equipment was used on election day, the board:

- May request that the ballots be recounted by voting equipment

OR

- May count the ballots by hand

OR

- May conduct both types of counts

If using voting equipment to conduct the recount, the auditor or auditor's designee must operate the voting equipment and use the same program used on election day unless the program is known or believed to be flawed.

[50.48(4), 50.49(5), IAC 721—26.105(2)]

In the event a hand recount differs from a recount using voting equipment, the recount board must determine which results to give to the auditor in its report issued under §50.48(4)(c).

Counting Standards for Write-In Votes

During the recount, write-in votes must be counted using the same standards used for counting on election day. For example, if voting equipment was used on election day, the voting target must be marked in order for the write-in vote to be counted, even if the recount board is counting the ballot by hand and the voter's intent can be clearly ascertained.

[§49.99, IAC 721—26.104(3)]

Voting Equipment Memory Cards

If the recount board chooses to use voting equipment for the recount, the auditor may use different memory cards for the recount. If the auditor plans to use the same memory cards in the recount as used in the election, the information on the memory cards used in the election must be retained for six months for non-federal elections and 22 months for federal elections.

Recount Board Restrictions

Recount boards do not resolve procedural or legal questions about the conduct of the election or the qualifications of voters. No additional evidence, beyond the ballots that were counted, is reviewed during a recount. The board does not decide if ballots were correctly accepted or rejected. The board merely counts ballots which were already counted.

See the Contest chapter for information about available legal remedies when allegations of misconduct are raised after an election.

Auditor and Staff Restrictions

The auditor and auditor's staff should not count votes unless they are designated as a member of the recount board. Do not instruct members of the recount board to count or not count a particular vote. Recount board members are the only individuals authorized to decide whether or not to count a vote. If the auditor or auditor's designee is asked a question related to whether or not a vote should be counted, that individual should instruct the recount board to review the Counting Votes Guide and IAC 721—26. If legal advice is needed, the recount board should consult with the county attorney.

The auditor or auditor's designee is responsible for the security of the ballots and must supervise their handling. If the recount board requests the use of the optical scan voting machine, the auditor or auditor's designee must operate the tabulation machine.

[IAC 721—26.105]

After Counting

The recount board must reseal the ballots after they have been retabulated and return them to the auditor. Complete the “Recount Ballot Tracking Chart” available in the Election Forms Library.

[§50.48(4)(c), 50.49(5), IAC 721—26.104(4)]

Recount Board’s Report

When the recount is complete, the board must file a written report of its findings with the auditor. The report must be filed no later than the 18th day following the county’s canvass. The 18th day falls on a Saturday so the deadline moves to Monday.

The report must be signed by at least two members of the recount board. The tally sheets and any voting equipment results tapes produced in the recount process must be attached to it.

[§47.4, 50.48(4)(c), 50.49(5), IAC 721—26.107]

Exception: Recounts for city primary elections or regular city election in cities with runoff election provisions must be completed no later than the 11th day following the board of supervisors’ canvass. The 11th day falls on a Saturday so the deadline moves to Monday.

[§47.4, 50.48(7), IAC 721—26.107]

Notify Board of Supervisors

If the recount board reports results that differ from the original canvass, even if the winner doesn’t change, notify the board of supervisors of the need to re-canvass as soon as possible. The board of supervisors must reconvene within three days after being notified to correct the canvass. The abstract of votes and the election canvass summary for the race or measure must be updated to reflect the results included in the recount board’s report.

[§50.48(5), 50.49(5)]

See the Post Election Day chapter for information on generating canvass materials.

Notify the Secretary of State

If the recount was for a federal or state office, notify the SOS and send a new abstract and election canvass summary for the office or measure ASAP so the state canvass of votes may be completed.

[§50.48(6)]

Return Bond (if necessary)

When a bond is collected and the outcome (winner) of the election changes, the bond is returned to the party who posted the bond.

[§50.48(2)(b)]

Administrative Recounts

Requesting an Administrative Recount

An administrative recount may be requested by the auditor when:

- the auditor suspects that voting equipment used in the election malfunctioned,
- equipment programming errors may have affected the outcome of the election, or
- the PEOs report counting errors to the auditor after the conclusion of the canvass of votes in the precinct.

[§50.50, IAC 721—21.25]

The auditor must make a request to conduct an administrative recount in writing to the board of supervisors. The request must explain the nature of the problem, in which precincts the problem occurred, and list which offices and questions should be recounted.

[§50.50]

Request Deadline

The request for an administrative recount can be made as soon as the day after the election and as late as three days after the canvass of votes.

[IAC 721—21.25]

Board of Supervisors Orders Recount

The board of supervisors must determine whether to order the administrative recount. The board must submit a written order to conduct the recount to the auditor as soon as possible.

[§50.50]

Bond Requirement

There is no bond for an administrative recount.

[§50.50]

Administrative Recount Board Process and Timeline

The ASVP board conducts the recount. The process and timeline for administrative recounts is the same as for other recounts.

[§50.50]

If the recount board chooses to use voting equipment for the recount, the auditor may use different memory cards for the recount. If the auditor plans to use the same memory cards in the recount as used in the election, the information on the memory cards used in the election must be retained for six months for non-federal elections and 22 months for federal elections.

The auditor may also use different election definition files if the auditor believes the original files were flawed. Retain both the original and the new files for six months for non-federal elections and 22 months for federal elections.

See the election document retention record available in the Election Forms Library for additional information.

[IAC 721—21.25]

If the recount board finds an error in the programming which may have affected the outcome of an election for any office or measure, the board must describe the error in its report.

[§50.50]

Notify Board of Supervisors

If the recount board reports results that differ from the original canvass, even if the winner doesn't change, notify the board of supervisors of the need to re-canvass as soon as possible. The board of supervisors must reconvene within three days after being notified to correct the canvass. The abstract of votes and the election canvass summary must be updated to reflect the results included in the recount board's report.

[§50.48(5)]

Notify the Secretary of State

If the recount was for a federal or state office, notify the SOS and send a new abstract and election canvass summary for the office or measure ASAP so the state canvass of votes may be completed.

[§50.48(6)]