

# Chapter 434-264 WAC

## RECOUNTS

(Formerly chapter 434-62 WAC)

### WAC

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**WAC 434-264-005 Application.** This chapter applies to all contests subject to a recount pursuant to chapter 29A.64 RCW and to manual and machine recounts unless otherwise noted. In addition, each county auditor must promulgate written procedures regarding the conduct of a recount.

[Statutory Authority: RCW 29A.04.611. 07-12-032, § 434-264-005, filed 5/30/07, effective 6/30/07.]

**WAC 434-264-010 Recount.** A recount is the process for retabulating the votes for a specific office or issue on all valid ballots, including write-ins, cast in a primary or election. If a ballot has been duplicated in accordance with WAC 434-261-005, the duplicate shall be counted.

[Statutory Authority: RCW 29A.04.611. 10-03-072, § 434-264-010, filed 1/18/10, effective 2/18/10; 07-12-032, § 434-264-010, filed 5/30/07, effective 6/30/07.]

**WAC 434-264-020 Recount—Restrictions.** All questions of voter registration, voter qualification, and voter intent previously considered during the original count shall not be reconsidered during a recount.

However, if any ballots or votes are discovered during the recount process that were not originally counted, the ballots shall be presented to the county canvassing board in accordance with RCW 29A.60.050, and the county canvassing board shall determine whether such ballots are to be included in the recount.

Nothing in this section shall preclude the county canvassing board from canvassing a ballot or a vote not canvassed during the original or previous count.

[Statutory Authority: RCW 29A.04.611. 09-18-098, § 434-264-020, filed 9/1/09, effective 10/2/09; 09-03-110, § 434-264-020, filed 1/21/09, effective 2/21/09; 07-12-032, § 434-264-020, filed 5/30/07, effective 6/30/07.]

**WAC 434-264-030 Observers—Conduct.** Observers must be permitted to witness activities associated with the recount.

(12/6/11)

Any questions or objections by observers must be directed toward the county canvassing board, supervisory personnel or another designated staff person present at the recount. Under no circumstance may an observer interrupt the recount process in objection to the decision to count or not count a ballot.

The county auditor shall provide a copy of any additional guidelines that are established by the county canvassing board to each observer.

The county canvassing board or its designated representative may ask any observer who is causing a disruption to the recount process to leave the area.

[Statutory Authority: RCW 29A.04.611. 07-12-032, § 434-264-030, filed 5/30/07, effective 6/30/07.]

**WAC 434-264-040 Observers—Designated.** (1) In addition to the admittance of two observers for each side of a recount as required by RCW 29A.64.041, a county canvassing board is encouraged to request additional observers from each of the two major political parties, as space allows. If provided, the additional party observers may be stationed to observe each counting board's process and must be considered the official observers of the recount.

(2) One observer representing each candidate or the proponents or opponents to a measure may also be permitted to observe each counting board's process.

[Statutory Authority: RCW 29A.04.611. 07-12-032, § 434-264-040, filed 5/30/07, effective 6/30/07.]

**WAC 434-264-050 Observers—Priority.** Priority for viewing space shall be given in the following order:

(1) Candidates of the affected race or their designated representative or to the designated representative for the proponents and opponents of any measure;

(2) Each candidates' or representatives' counsel;

(3) Designated party observer;

(4) Additional observers for the candidates or ballot measure proponents or opponents; and then

(5) General public and media.

[Statutory Authority: RCW 29A.04.611. 07-12-032, § 434-264-050, filed 5/30/07, effective 6/30/07.]

**WAC 434-264-055 Machine recount of votes cast on digital scan ballots.** In a machine recount of votes cast on digital scan ballots, the tabulating equipment must be programmed to identify all ballots that include an undervoted office or ballot measure subject to the recount. All ballots identified must be inspected to confirm that no vote was cast. If the inspection detects a vote cast that was not correctly counted by the tabulating equipment, the county auditor shall

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refer the ballot to the county canvassing board consistent with WAC 434-261-070.

[Statutory Authority: RCW 29A.04.611. 08-15-052, § 434-264-055, filed 7/11/08, effective 8/11/08.]

**WAC 434-264-060 Machine recount of votes cast on direct recording electronic devices.** Machine recounts must be conducted by reloading individual ballot data packs or cartridges. The county auditor must verify all data packs or cartridges have been loaded.

[Statutory Authority: RCW 29A.04.611. 07-12-032, § 434-264-060, filed 5/30/07, effective 6/30/07.]

**WAC 434-264-070 Manual recount of votes cast on direct recording electronic devices.** In a manual recount, the county auditor must compare the paper records with the electronic results cast on direct recording electronic devices.

(1) Written procedures to perform manual recounts of direct recording electronic devices must be promulgated by the county auditor. The procedures for manually tabulating results must be conducted using a process that includes the following elements:

(a) A continuous paper record must be utilized; the paper record must not be cut into separate individual records;

(b) If a paper record indicates a ballot has been canceled, the ballot must be exempt from the recount; and

(c) If the paper records are incomplete, the ballot images stored on the direct recording electronic device must be printed and then compared to the electronic results recorded on the direct recording electronic device.

(2) If there is a discrepancy between the electronic results and the paper record results, the canvassing board must take necessary action to investigate and resolve the discrepancy. The canvassing board must prepare a public report that outlines the discrepancy and how it was resolved. The results as determined by the canvassing board must replace the electronic results in the official certification.

(3) If there is a discrepancy that cannot be resolved:

(a) The secretary of state must be notified immediately; and

(b) The vendor must be notified and required to provide a satisfactory explanation for the discrepancy within thirty days.

[Statutory Authority: RCW 29A.04.611. 07-20-074, § 434-264-070, filed 10/1/07, effective 11/1/07; 07-12-032, § 434-264-070, filed 5/30/07, effective 6/30/07.]

**WAC 434-264-080 Recount—Irregular votes.** For optical and digital scan ballots in which voter intent was not previously determined, the validity of the vote will be determined according to the statewide standards on determining voter intent manual required by WAC 434-261-086.

The county canvassing board must make the final determination of voter intent on ballots referred to the county canvassing board not addressed by the statewide standards on determining voter intent.

[Statutory Authority: RCW 29A.04.611. 07-12-032, § 434-264-080, filed 5/30/07, effective 6/30/07.]

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**WAC 434-264-090 Manual recount—Sorting.** All ballots must be sorted by precinct. If a results report from the original count or the previous machine recount can be produced by batch, ballots may be sorted by batch instead of precinct.

[Statutory Authority: RCW 29A.04.611, 29A.04.620, and 29A.04.630. 11-24-064, § 434-264-090, filed 12/6/11, effective 1/6/12. Statutory Authority: RCW 29A.04.611. 07-12-032, § 434-264-090, filed 5/30/07, effective 6/30/07.]

**WAC 434-264-100 Manual recount—Counting boards.** Each county auditor shall establish the number of counting boards to conduct the recount. Each board shall be comprised of no less than two members, made up of:

(1) One representative from each of the two major political parties; or

(2) Two staff persons.

[Statutory Authority: RCW 29A.04.611. 07-20-074, § 434-264-100, filed 10/1/07, effective 11/1/07; 07-12-032, § 434-264-100, filed 5/30/07, effective 6/30/07.]

**WAC 434-264-110 Manual recount—Process.** The counting board may only count the responses for one race or measure at a time. The following process to count the ballots shall be used during a recount.

(1) Each counting board shall be given the ballots one precinct or batch at a time. The results from the original count shall not be given with the ballots. The precinct or batch number must be made available to any observers.

(2) The ballots shall be sorted into separate stacks for each of the candidates or side of a ballot measure. Additional stacks may be created for overvotes, undervotes, and write-ins.

(3) Each stack of ballots must be manually counted at least twice to confirm the number of votes in each stack. The results of the manual count shall not be shared until both persons have counted the ballots.

(4) Individual tallies for each stack shall be compared. If the manual counts match, the results shall be reported to the designated staff person and the results shall be compared to the results previously certified.

(5) If the two manual counts do not match, the ballots shall be counted by the same counting board one more time. If the manual counts still do not match, the discrepancy must be reported to the designated staff person and the ballots referred to another counting board.

[Statutory Authority: RCW 29A.04.611. 09-12-078, § 434-264-110, filed 5/29/09, effective 6/29/09; 07-12-032, § 434-264-110, filed 5/30/07, effective 6/30/07.]

**WAC 434-264-120 Recount—Interruption.** If the recount must be stopped prior to its completion for any reason, the ballots must be placed in secure storage until the resumption of the recount. The observers must be allowed to witness the sealing of the ballots and the recording of the seal numbers. Observers must also be allowed to witness the confirmation of the seal numbers at the resumption of the recount.

[Statutory Authority: RCW 29A.04.611. 07-12-032, § 434-264-120, filed 5/30/07, effective 6/30/07.]

**WAC 434-264-130 Recount—Completion.** On completion of the recount:

(1) The county auditor must prepare an amended abstract of the recounted ballots for the county canvassing board. The amended abstract must include a revised cumulative summary, as well as the votes cast in each precinct for the office or measure that was recounted.

(2) The results must be formally reviewed and approved by the county canvassing board.

(3) If the results of the manual count do not match the results of the original count, the county canvassing board must verify all ballots have been recounted. The county canvassing board shall take all necessary steps to investigate and resolve any discrepancies.

(4) The county canvassing board must certify the amended abstract that, for each precinct, displays the results of the office that has been recounted. The new abstract must be included in the amended certified canvass report.

(5) Copies of the certified amended abstract must be distributed to the same persons or agencies as the original certified abstract of votes.

(6) The amended certified canvass report must be available to the public by the next business day following the recount.

(7) Interim reports of the recount may be published at the discretion of the county canvassing board.

(8) If the recount involves ballots from more than one county, the secretary of state may require that amended abstracts be certified by each county canvassing board on a uniform date.

[Statutory Authority: RCW 29A.04.611, 29A.04.620, and 29A.04.630. 11-24-064, § 434-264-130, filed 12/6/11, effective 1/6/12. Statutory Authority: RCW 29A.04.611. 07-12-032, § 434-264-130, filed 5/30/07, effective 6/30/07.]