

1-10.5-102. Recounts for congressional, state, and district offices, state ballot questions, and state ballot issues

(1) If the secretary of state determines that a recount is required for the office of United States senator, representative in congress, any state office or district office of state concern, any state ballot question, or any state ballot issue certified for the ballot by the secretary of state, the secretary of state shall order a complete recount of all the votes cast for that office, state ballot question, or state ballot issue no later than the thirtieth day after the election.

(2) The secretary of state shall notify the county clerk and recorder of each county involved by registered mail and facsimile transmission of a public recount to be conducted in the county at a place prescribed by the secretary of state. The recount shall be completed no later than the thirtieth day after any election. The secretary of state shall promulgate and provide each county clerk and recorder with the necessary rules and regulations to conduct the recount in a fair, impartial, and uniform manner, including provisions for watchers during the recount. Any rule or regulation concerning the conduct of a recount shall take into account the type of voting system and equipment used by the county in which the recount is to be conducted.

(3) (a) Prior to any recount, the canvass board shall choose at random and test voting devices used in the candidate race, ballot issue, or ballot question that is the subject of the recount. The board shall use the voting devices it has selected to conduct a comparison of the machine count of the ballots counted on each such voting device for the candidate race, ballot issue, or ballot question to the corresponding manual count of:

(I) In the case of an election taking place in a county prior to the date the county has satisfied the requirements of [section 1-5-802](#), the ballots; or

(II) For an election taking place in a county on or after the date the county has satisfied the requirements of [section 1-5-802](#), the voter-verified paper records.

(b) If the results of the comparison of the machine count and the manual count in accordance with the requirements of subparagraph (I) or (II) of paragraph (a) of this subsection (3) are identical, or if any discrepancy is able to be accounted for by voter error, then the recount may be conducted in the same manner as the

original ballot count. If the results of the comparison of the machine count and the manual count in accordance with the requirements of subparagraph (I) or (II) of paragraph (a) of this subsection (3) are not identical, or if any discrepancy is not able to be accounted for by voter error, a presumption shall be created that the voter-verified paper records will be used for a final determination unless evidence exists that the integrity of the voter-verified paper records has been irrevocably compromised. The secretary of state shall decide which method of recount is used in each case, based on the secretary's determination of which method will ensure the most accurate count, subject to judicial review for abuse of discretion. Nothing in this subsection (3) shall be construed to limit any person from pursuing any applicable legal remedy otherwise provided by law.

(c) The secretary of state shall promulgate such rules, in accordance with article 4 of title 24, C.R.S., as may be necessary to administer and enforce any requirement of this section, including any rules necessary to provide guidance to the counties in conducting the test of voting devices for the recount required by paragraph (a) of this subsection (3). The rules shall account for:

- (I) The number of ballots cast in the candidate race, ballot issue, or ballot question that is the subject of the recount;
- (II) An audit of each type of voting device utilized by the county in the candidate race, ballot issue, or ballot question that is the subject of the recount; and
- (III) The confidentiality of the ballots cast by the electors in the candidate race, ballot issue, or ballot question that is the subject of the recount.

Rule 8.8

Watchers, Official Observers, and Media Observers may be present during a recount. Watchers, Official Observers, and Media Observers must be qualified and sworn in for a recount as described in Rule 8.1 and are subject to all other provisions related to the recount process. Any political party or candidate involved in the recount or proponents or opponents of an issue or question involved in the recount may appoint one or more watchers to be present at any time during the recount. A candidate who is subject to a recount may appoint himself or herself, or a member of the candidate's family as a watcher at a recount. [Sections 1-7-105 and 1-7-106, C.R.S.]

Rule 10.11 Watchers and observers during a recount

10.11.1

The Secretary of State may appoint official observers in any recount.

10.11.2

Each candidate or the candidate's watcher, media observers, and official observers, may be present and witness the recount in accordance with Rule 8.

10.11.3

The recount board must take the canvass board oath, assisting election judges must take the election judge's oath, and any person observing the recount must take a watcher's oath.

10.11.4

Complaints. A watcher may submit a complaint in writing to the county clerk or designee. Written complaints during a recount will be addressed in accordance with Rule 13.