**5:02:09:05.  Recount procedure.** The following procedure shall be used in recounting any election counted by an automatic tabulating system:

(1)  If a discrepancy in the number of ballots for a precinct is discovered during ballot tabulation and is not resolved at that time, the county auditor shall make every effort to resolve the discrepancy following the official county canvass and prior to the convening of the recount board;

(2)  The recount board shall first examine each ballot to determine if the official stamp has been placed on the ballot and may not count any vote on an unstamped ballot;

(3)  If any discrepancy remains after subdivisions (1) and (2) have been completed and the total number of ballots in a precinct exceeds the number of names in the pollbook, the ballots shall be placed in a box and the recount board shall draw from the box the number of ballots that is equal to the excess and place these in an envelope labeled "ballots drawn by recount board to justify totals";

(4)  The recount board shall review ballots for proper marking procedure according to the voting instructions. Each ballot marked in a manner other than as provided in the instructions to voter and which may not be counted by the machine shall be hand counted or duplicated in the manner used by a resolution board and the duplicate counted by machine. The recount board shall determine the voter's intent based on the standards found in ARSD 5:02:09:22;

(5)  The recount board shall review each ballot to determine if there are any write-in votes. Any write-in vote may not be counted but all other votes for which the voter's intent can be determined shall be counted;

(6)  The recount board shall examine the ballots reviewed by the resolution board to determine the correctness of the initial rejection or duplication. The recount board shall rule on whether each mark is to be counted or rejected according to § 5:02:09:22;

(7)  The recount board shall test the automatic tabulating equipment according to § 5:02:09:01.02. The board may conduct additional tests of the equipment including a comparison with hand-counted results from a precinct;

(8)  The recount board shall count the ballots with the automatic tabulating equipment. A hand count may be conducted to verify the accuracy of the count by the automatic tabulating equipment. If any discrepancy is found, the discrepancy shall be resolved before the recount is concluded. If any vote cannot be accurately counted by the automatic tabulating equipment but can be hand counted, the hand count tally of that vote shall be added to the count by the automatic tabulating equipment;

(9)  The recount board shall complete the Certificate of Disputed Ballot as provided in § 5:02:19:09;

(10)  Any question arising on the recount shall be determined by majority vote of the recount board; and

(11)  The recount board shall certify the new returns as printed by the automatic tabulating equipment or as hand counted as the "Official Returns" for the election by completing the Certificate of Recount as provided in § 5:02:19:08. The Certificate of Recount shall be filed with the person in charge of the election and shall constitute the final returns for the election in that jurisdiction. If the recount involved an election canvassed by the State Board of Canvassers a duplicate original of the Certificate of Recount shall be forwarded to the secretary of state to be incorporated into the statewide totals as provided by SDCL 12-21-39.

**Source:** 3 SDR 69, effective April 10, 1977; 6 SDR 25, effective September 24, 1979; 21 SDR 77, effective October 24, 1994; 26 SDR 168, effective June 25, 2000; 28 SDR 99, effective January 17, 2002; 29 SDR 177, effective July 2, 2003; 33 SDR 230, effective July 1, 2007; 36 SDR 112, effective January 11, 2010.

**General Authority:** SDCL 12-17B-7, 12-17B-17(4).

**Law Implemented:** SDCL 12-17B-7, 12-17B-16.