

Notice of Proposed Rule

DEPARTMENT OF STATE

Division of Elections

RULE NO.: RULE TITLE:

1S-2.031 Recount Procedures

PURPOSE AND EFFECT: 1) Effectuate Ch. 2020-109, LOF, by: adding certification, testing, and use of independent recount system; allowing recount and outstaging of the ballots or digital ballot images; and obviate need to re-process ballots through independent recount system a second time; 2) make other clarifications based on experience.

SUMMARY: Set forth the procedures for conducting a recount in the event one is required

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the Agency.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 97.012; 102.141; 102.166, F.S.

LAW IMPLEMENTED: 102.166(5)(d)7., F.S.

A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:

DATE AND TIME: May 19th, 2022 at 2:00 p.m.

PLACE: Heritage Hall, 500 S Bronough St., Tallahassee, FL 32399 or call 1 (888)585 9008, conference room number 201-297-717

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 3 days before the workshop/meeting by contacting: Stephanie Buse at stephanie.buse@dos.myflorida.com or (850)245-6513. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: W. David Chappell at david.chappell@dos.myflorida.com or (850)245-6503

THE FULL TEXT OF THE PROPOSED RULE IS:

Substantial rewording of Rule 1S-2.031 follows. See Florida Administrative Code for present text.

1S-2.031 Recount Procedures

(1) Procedures. The Department of State, Division of Elections, is required to adopt detailed rules prescribing additional recount procedures for certified voting systems, which shall be uniform to the extent practicable. Form DS-DE XX (effective MM/YYYY), entitled "Recount Procedures Manual," is hereby incorporated by reference and available at the following link: [insert link]. The form is also available by download from the Division of Elections' rules webpage at: <http://dos.myflorida.com/elections/>, by requesting a copy by phone (850) 245-6200 or by mail from the Division of Elections, R.A. Gray Building, Room 316, 500 South Bronough Street, Tallahassee, Florida 32399-0250.

(2) Requirements for certification and use of an independent recount tabulation system for recounts. The Department of State, Division of Elections, is required to adopt procedures for certification and use of automatic tabulating equipment that is not part of a voting system.

(a) Certifying body. Any person desiring to have an independent recount tabulation system approved for use in Florida shall submit a letter to the Bureau of Voting Systems Certification, Division of Elections, Department of State, requesting certification and providing the independent recount tabulation system's technical data package and other items as deemed necessary to determine whether the system will be recommended for this purpose in the state.

(b) Criteria. The independent recount tabulation system must satisfy the following criteria prior to certification:

1. Be completely independent of any voting system certified in the State of Florida. The independent recount tabulation system must not contain any proprietary election-related hardware or software in common with a voting system certified for use in the State of Florida. Any commercially available software or hardware shared between the two systems must not be modified. However, information used to decode the ballot artwork and any barcoding schemes on ballots may be shared from the primary vote tabulation system to the independent recount system.

2. Be capable of tabulating ballots produced by the primary voting system.

3. Comply with the certification standards for a central count tabulator pursuant to s. 101.015, F.S., and rule 1S-5.001, F.A.C.

4. Be fast enough to produce final, public recount results no later than the statutory deadline.

5. Be capable of operating without vendor support to use the system. If desired, however, a county may choose to use the independent recount tabulation system's vendor support.

6. Be capable of examining marked ballots to determine a valid vote, no vote, and marginal mark.

7. Be capable of physically or digitally segregating unreadable ballots, and physically or digitally segregating overvoted or undervoted ballots pursuant to s. 102.166, F.S.

8. Be capable of displaying or reporting results only for those races that are being recounted.

9. Be capable of identifying the physical storage location of each specific ballot based on the designated paper ballot image if digital images are used.

10. By January 1, 2023, all independent recount tabulation systems submitted for certification in the State of Florida must be capable of producing election results and precinct-level election results pursuant to s. 98.0981, F.S. and rule 1S-2.053, F.A.C.

11. Reflect that the recount results will be uniform for all properly marked ballots regardless of which approved scanner is used.

12. All examination and testing of the independent recount tabulation system shall occur in Tallahassee, Florida, at a location provided by the vendor, unless examination and testing can be conducted at the Bureau of Voting Systems Certification's physical location. If there are associated costs beyond this, the vendor shall reimburse the Department of State an amount equal to the actual costs incurred by the department in its testing and examination of the independent recount tabulation system. Reimbursable actual costs of testing include reasonable travel costs such as lodging, car rental, parking, gas, airfare, travel-related fees and in the case of meals, not to exceed the per diem rate established per s. 112.061(6), F.S.

(c) Notice. Notice of approval or denial will be provided within 45 days after all examination and testing of the independent recount tabulation system is completed.

(d) Authorized sale and use. After certification of an independent recount tabulation system, any changes to the system require the new system to be submitted to the Bureau of Voting Systems Certification for testing and certification prior to use in the State of Florida. No governing body shall purchase or cause to be purchased any independent recount tabulation system unless such equipment has been certified for use in this state by the Department of State. A vendor of automatic independent recount tabulation systems may not provide an uncertified recount system, recount system component, or recount system upgrade to a local governing body or supervisor of elections for official use in this state.

Rulemaking Authority 20.10(3), 97.012(1), 102.141, 102.166(5) FS. Law Implemented 102.141, 102.166 FS. History—New 5-30-02, Amended 4-13-04, 11-3-05, 1-24-16, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Maria Matthews, Director, Division of Elections

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Laurel M. Lee, Secretary of State

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: April 14, 2022

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: December 20, 2021